

HKSIR 400 (Revised)  
Issued December 2016

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Effective upon issue

*Hong Kong Standard on  
Investment Circular Reporting Engagements 400 (Revised)*

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# **Comfort Letters and Due Diligence Meetings**



Hong Kong Institute of  
**Certified Public Accountants**  
香港會計師公會

**HONG KONG STANDARD ON  
INVESTMENT CIRCULAR REPORTING ENGAGEMENTS 400 (REVISED)**

**COMFORT LETTERS AND DUE DILIGENCE MEETINGS**

(Effective upon issue)

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Hong Kong Standard on Investment Circular Reporting Engagements (HKSIR) 400 (Revised), *Comfort Letters and Due Diligence Meetings* should be read in the context of the *Amended Preface to the Hong Kong Quality Control, Auditing, Review, Other Assurance, and Related Services Pronouncements* which sets out the application and authority of HKSIRs.

This HKSIR is based on the Listing Rules/GEM Rules, the Takeover Code and the Companies (Winding Up and Miscellaneous Provisions) Ordinance that were in effect as at 29 December 2016.

## Definitions

The definitions used in this HKSIR are:

- a. *Bring-down letter:* An abbreviated letter updating the procedures described in a previously issued comfort letter.
- b. *GEM Rules:* Rules Governing the Listing of Securities on the Growth Enterprise Market
- c. *Investment circular:* A document issued by an entity relating to securities and for the information or investment decision of the holders of the entity's securities or other parties, including without limitation a listing document, a prospectus, a circular to shareholders or similar document.
- d. *Issuer:* As defined by the Listing Rules/GEM Rules, an issuer is any company or other legal person any of whose equity or debt securities are the subject of an application for listing or some of whose equity or debt securities are already listed.
- e. *Listing Rules:* Rules Governing the Listing of Securities on the Stock Exchange.
- f. *Prospectus:* A document which has the same meaning as in section 2(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance.
- g. *Reporting accountants:* Certified public accountants who are engaged to prepare public reports and letters for inclusion in, or private letters in connection with, an investment circular. Where the context requires, this term includes auditors where they are carrying out a role in connection with an investment circular, other than that of reporting as auditors on financial statements.
- h. *Securities:* Including but not limited to equity securities and debt securities as defined by the Listing Rules/GEM Rules.
- i. *Sponsor:* Any corporation or authorised financial institution, licensed or registered under applicable laws to advise on corporate finance matters and appointed as a sponsor by a new applicant under the Listing Rules / GEM Rules to assist the new applicant with its initial application for listing.
- j. *Stock Exchange:* The Stock Exchange of Hong Kong Limited.
- k. *Takeover Code:* The Codes on Takeovers and Mergers and Share Buy-backs issued by the Securities and Futures Commission.

## Introduction and Scope

1. Reporting accountants issuing a comfort letter or taking part in a due diligence meeting with sponsors for an offering of securities in Hong Kong should follow the requirements of this HKSIR. Reporting accountants should also comply with HKSIR 100, *Investment Circulars and Reporting Accountants* when it is finalised and the requirements of the Code of Ethics for Professional Accountants issued by the Hong Kong Institute of Certified Public Accountants (the "Institute" or "HKICPA").
2. The Stock Exchange requires an applicant for listing to appoint a person acceptable to the Stock Exchange for the purpose to act as a "sponsor" to the issuer. The responsibilities of sponsors are set out in the Listing Rules/GEM Rules. These responsibilities, which include the requirement to conduct reasonable due diligence inquiries, are aimed broadly at ensuring that the issuer is suitable to be listed, that the directors understand their obligations both on initial listing and subsequently and that the investment circular complies with the Listing Rules/GEM Rules, is accurate and complete in all material respects and is not misleading.
3. In connection with the issuance of an investment circular by an issuer, reporting accountants may be requested by sponsors to perform procedures to provide comfort in respect of the integrity of certain information disclosed in the investment circular, or to comment on changes in selected financial statement items subsequent to the latest period reported on in the accountants' report. This HKSIR focuses on the issuance of a comfort letter and the participation in a due diligence meeting in these circumstances. Less frequently, these procedures may also be requested by sponsors in relation to other investment circulars prepared by issuers that are already listed. This HKSIR also applies to such letters and due diligence meetings.
4. In certain circumstances, reporting accountants may be engaged by sponsors and / or issuers to undertake a separate engagement to perform procedures other than those described in paragraph 3 above and which are outside the scope of a comfort letter as described by this HKSIR and illustrated in Appendix 2.
5. A due diligence investigation will be undertaken by sponsors to enable them to fulfil their obligations under the Listing Rules/GEM Rules. It is not usually practical for sponsors to carry out such an investigation entirely by themselves, and so they will often ask for professional assistance to provide them with comfort in certain areas outside of the historical financial information. Such assistance may be provided by reporting accountants in the form of a comfort letter and/or agreeing to answer questions at a due diligence meeting. Although the reporting accountants may provide such assistance, the responsibility for the completeness and accuracy of the investment circular, and its compliance with regulatory requirements remains that of the directors of the issuer. There is no statutory or Listing Rules/GEM Rules requirement for reporting accountants to provide a comfort letter covered by this HKSIR to sponsors.
6. Ordinarily, reporting accountants engaged by the issuer to prepare an accountants' report to be included in the investment circular will also be engaged by the issuer to assist sponsors in conducting their due diligence investigation of the issuer's affairs.
7. In providing a comfort letter and/or formulating a response to questions asked by sponsors, reporting accountants should bear in mind four principles underlying this HKSIR:
  - a. Only the sponsors can determine what is sufficient for a reasonable due diligence investigation in connection with their obligations under the Listing Rules/GEM Rules.

- b. The sponsors may rely on any written or oral<sup>1</sup> statement made by reporting accountants to add credibility to the subject matter of the statement; accordingly, any statement needs to be appropriately supported.
  - c. In order to make a statement that is appropriately supported, reporting accountants need to possess adequate knowledge of the subject matter, and to act with due care and an objective state of mind.
  - d. Reporting accountants can properly make a statement only if there is suitable evidence as a basis for reporting on the subject matter.
8. By providing a comfort letter or participating in a due diligence meeting, reporting accountants lend credibility to the information on which their comments are made. Hence it is important that the procedures to be undertaken relate only to matters to which their professional competence is relevant, and are performed in accordance with this HKSIR.
  9. The scope of work in an engagement under this HKSIR encompasses procedures in respect of selected financial information and in respect of subsequent changes in historical financial information included in the investment circular. This work should be planned and performed in accordance with the requirements of this HKSIR and with reference to the principles in other relevant standards issued by the HKICPA. In respect of selected financial and non-financial information, the reporting accountants report the procedures carried out and the findings obtained. Accordingly, in planning and performing this work the reporting accountants should refer to the principles in HKSRS 4400, *Engagements to Perform Agreed-Upon Procedures Regarding Financial Information*. In respect of subsequent changes in historical financial information, it is customary for reporting accountants to provide limited assurance<sup>2</sup>. Accordingly, in planning and performing this work, the reporting accountants should refer to the principles in HKSAE 3000 (Revised), *Assurance Engagements Other Than Audits or Reviews of Historical Financial Information* applicable to limited assurance engagements.
  10. Only sponsors can determine the information on which comfort is required and the procedures that will provide the required degree of comfort on that information. Consequently, it is important for reporting accountants, the issuer's management and sponsors to reach an early understanding and agreement as to the sponsors' requirements and the procedures the reporting accountants can properly perform. While responsibility for determining the appropriateness and sufficiency of the procedures required for the sponsors' purposes rests with the sponsors, reporting accountants have a professional responsibility not to be associated with information that they believe, or have reason to believe, is false or misleading.
  11. Reporting accountants, when issuing a comfort letter under this HKSIR may not issue any additional letters or reports under any other standard to sponsors that contain procedures expressly prohibited by this HKSIR.
  12. As explained in paragraphs 3 and 5 above, this HKSIR relates principally to an arrangement among the issuer, the sponsors and the reporting accountants in connection with the sponsors' due diligence responsibilities under the Listing Rules/GEM Rules. In certain circumstances, for example for large public offerings, reporting accountants may be requested to include other parties connected with the investment circular as addressees to the comfort letter. The comfort letter will be provided solely in the context of the due diligence procedures undertaken or procured to be undertaken by the addressees.

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<sup>1</sup> Oral statements may only be relied upon on the basis that the reporting accountants shall have no liability in contract or in tort (including negligence) for such oral statements, other than for an oral statement known to be false or misleading when made and made with intent to deceive.

<sup>2</sup> In a limited assurance engagement, the reporting accountants express their conclusion in the negative form. Accordingly, limited assurance is also commonly referred to as negative assurance.

13. Independent accountants should also follow the guidance in this HKSIR when requested to issue a comfort letter or take part in a due diligence meeting with persons fulfilling a similar role to sponsors in connection with an offering of debt securities. For an offering of debt securities in reliance on Regulation S under the U.S. Securities Act of 1933, as amended ("Regulation S"), an example arrangement letter is included in example 4 of Appendix 1 and an example comfort letter for a Regulation S debt offering is included in example 2 of Appendix 2 to this HKSIR. The example bring down letter in Appendix 3 may also be used, suitably modified with respect to terms such as "sponsor" and "prospectus" and details of the offering.

## Comfort Letters

### Agreeing the Terms of the Engagement

14. In accordance with the principles in HKSA 210, *Agreeing the Terms of Audit Engagements*, reporting accountants when entering into an arrangement with the issuer and the sponsors to issue a comfort letter should agree the terms of the arrangement with the issuer and sponsors. The terms of the arrangement should be recorded in writing.
15. The terms of the arrangement to issue a comfort letter are recorded in an arrangement letter among the issuer, the sponsors, and the reporting accountants. The arrangement letter documents and confirms the reporting accountants' acceptance of the arrangement, and the scope and nature of the procedures to be performed. It also documents the responsibilities of the issuer and sponsors, and the extent of the reporting accountants' responsibilities to them. The issuer and sponsors being signatories to the letter, also confirm their acceptance of the terms and procedures described therein. The arrangement letter may also include other parties with due diligence obligations as addressees, as indicated in the example arrangement letter included in Appendix 1 to this HKSIR.
16. In any discussion of procedures, reporting accountants should not indicate in any manner that any representations will be able to be provided regarding the sufficiency of the procedures for the sponsors' purposes.
17. Typically, reporting accountants are asked to apply procedures to selected items of a financial nature included in the investment circular and to report the results or factual findings. Such procedures may be applied to, for example, changes in selected financial statement items subsequent to the date of the historical financial information ("subsequent changes"), and specific items of financial or other information included in the investment circular.
18. Reporting accountants may suggest a meeting with management and sponsors, or consultation by telephone or other means, to discuss and agree upon the detailed procedures to be followed in connection with the comfort letter. Only sponsors can determine what is sufficient for their purposes, however, reporting accountants can advise sponsors and management if, for any reason, it is not feasible to perform a requested procedure.
19. Reporting accountants will normally be willing to assist sponsors, but the assistance reporting accountants can provide by way of comfort letters is subject to limitations. One limitation is that reporting accountants can properly report in their professional capacity only on matters to which their professional expertise is substantially relevant. Another limitation is that procedures such as those contemplated in a comfort letter provide reporting accountants with a basis for reporting no more than a list of procedures performed and the findings of those procedures, or providing limited assurance on subsequent changes. Such limited procedures may bring to the sponsors' attention significant matters affecting the financial information, but they do not provide assurance that sponsors will learn of all information that they may wish to know. Because matters concerning the issuer's operations and financial results are the responsibility of management and may not be within the expertise of reporting accountants, they are best communicated to sponsors by management.
20. To ensure a mutual understanding of the procedures to be followed, it is desirable that reporting accountants, after discussing the comfort letter with management and sponsors, furnish both with a draft of the letter they expect to be able to issue, clearly identified as a draft.

### **Contents of a Comfort Letter**

21. The detailed contents of a comfort letter will vary according to the nature of the information in the investment circular and the procedures agreed on by management, sponsors and reporting accountants.
22. At a minimum, a comfort letter should contain the following matters:
  - a. date;
  - b. reporting accountants' address;
  - c. addressees (e.g., the issuer and sponsors, as signatories to the arrangement letter);
  - d. identification of the purpose for which the procedures were performed;
  - e. a statement that the comfort letter is provided pursuant to the terms agreed upon with the addressees in the arrangement letter;
  - f. a statement that reporting accountants comply with the Code of Ethics for Professional Accountants issued by the Hong Kong Institute of Certified Public Accountants;
  - g. a statement that the engagement was performed in accordance with this HKSIR;
  - h. identification of specific financial or non-financial information to which the procedures have been applied;
  - i. a description of the procedures performed and the results or factual findings, including sufficient details of errors and exceptions found;
  - j. when reporting factual findings on agreed-upon-procedures, a statement that the procedures performed do not constitute an assurance engagement in accordance with standards within the Hong Kong Framework for Assurance Engagements and, as such, no assurance is expressed; and when limited assurance is given on subsequent changes, a statement that the procedures performed do not constitute an audit or review in accordance with Hong Kong Standards on Auditing or Hong Kong Standards on Review Engagements issued by the Hong Kong Institute of Certified Public Accountants;
  - k. a statement that the letter is restricted to the addressees of the letter and is to be used only in connection with the stated purpose of the letter; and
  - l. reporting accountants' signature.
23. Sponsors may request reporting accountants to provide a letter reporting the updating of the procedures described in a previously issued comfort letter. This is commonly referred to as a "bring-down" letter. Such a letter should normally be issued at or shortly before the closing date. If more than one letter is requested, it will be necessary to carry out the procedures and enquiries as of the cut-off date for each letter. Comments contained in an earlier letter may, where appropriate, be incorporated by reference in a subsequent letter.
24. An example of a comfort letter and a bring-down letter is included in Appendix 2 and Appendix 3 to this HKSIR.

25. Reporting accountants should have obtained knowledge of the internal controls, policies and procedures before reporting on:
- a. selected financial information;
  - b. non-financial information derived from accounting records; or
  - c. subsequent changes.
26. Reporting accountants may be requested by sponsors to perform procedures and report in the comfort letter on the above kind of information. Reporting accountants report on any such matters only after having obtained knowledge of the issuer's internal controls, policies and procedures as they relate to the preparation of the historical financial information or interim financial information. Knowledge of the issuer's internal controls includes knowledge of the control environment and control systems. Reporting accountants who have reported on an issuer's historical financial information ordinarily should have acquired sufficient knowledge of the issuer's internal controls, policies and procedures as they relate to the preparation of the historical financial information, and may have acquired such knowledge with respect to interim financial information. Reporting accountants who have performed a review in accordance with HKSRE 2400 (Revised), *Engagements to Review Historical Financial Statements* or HKSRE 2410, *Review of Interim Financial Information Performed by the Independent Auditor of the Entity* ordinarily should have acquired such knowledge with respect to the period(s) encompassed by the review. When reporting accountants have not acquired sufficient knowledge of the issuer's internal controls, policies and procedures, additional procedures are performed to obtain the knowledge that is considered necessary to carry out the engagement.
27. It would be inappropriate for reporting accountants to add credibility to information relating to a period without knowledge of the issuer's internal controls, policies and procedures. Reporting accountants should give comfort with respect to periods not covered by an assurance engagement, only after having obtained or updated knowledge of internal controls, policies and procedures for the periods.

*Financial and Non-financial Information*

28. When reporting accountants provide a comfort letter reporting procedures performed with respect to specific items of financial or quantitative non-financial information in the investment circular:
- a. the comfort letter should:
    - i. specifically identify the information;
    - ii. describe in detail the procedures performed at the request of sponsors; and
    - iii. describe the results of applying the procedures;
  - b. the comfort letter should state that:
    - i. the information has not been the subject of an audit or review engagement performed in accordance with Hong Kong Standards on Auditing or Hong Kong Standards on Review Engagements;
    - ii. reporting accountants make no representation regarding any matter of legal interpretation;
    - iii. reporting accountants make no representation about the adequacy for the sponsors' purposes of the procedures followed;
    - iv. reporting accountants make no representations about the adequacy or completeness of the disclosure; and



- v. the procedures would not necessarily disclose material misstatements or omissions or matters of significance with respect to the comments made; and
  - c. the comfort letter should avoid the use of terms of uncertain meaning (such as general review, limited review, reconcile, test or check) unless the procedures contemplated by these terms are described in the letter.
29. When reporting accountants perform procedures with respect to specific items of financial or non-financial information in the investment circular, it is important that the comfort letter be worded so as to minimise the possibility of misinterpretation.
30. To avoid ambiguity, it is important that the specific information commented on in the comfort letter be identified by reference to specific captions, tables, page numbers, paragraphs, or sentences. This information may be presented in any one of several ways. Descriptions of the procedures followed and the results obtained may be stated individually for each item of specific information commented on. Alternatively, if the procedures and findings are adequately described, some or all of the descriptions may be grouped or summarised, as long as the applicability of the descriptions to items in the investment circular is clear and the descriptions do not imply that the reporting accountants assume responsibility for the adequacy of the procedures. It may also be appropriate to present a matrix, listing the information and procedures applied to the specific items. Reporting accountants may also choose to identify procedures performed using specific symbols, and identify items to which those procedures have been applied directly on a copy of the applicable pages of the investment circular, which are attached to the comfort letter.
31. Reporting accountants should report on financial information contained in the investment circular only when:
- a. it has been obtained from the issuer's historical financial information, financial statements or accounting records that are subject to the issuer's internal controls, policies and procedures;
  - b. it has been derived directly from such historical financial information, financial statements or accounting records by analysis or computation (for example, percentages or financial ratios); or
  - c. it has been the subject of a separate assurance engagement performed in accordance with Hong Kong Standards on Auditing and Assurance.
32. Reporting accountants can agree to report on a procedure such as comparing information contained in an investment circular to a schedule prepared by management, but only if the information in the schedule has been derived from accounting records subject to the issuer's internal controls, policies and procedures of which reporting accountants have knowledge. While responsibility for determining the appropriateness and sufficiency of the procedures required for the sponsors' purposes rests with the sponsors, reporting accountants have a professional responsibility not to be associated with information that they believe, or have reason to believe, is false or misleading.
33. Reporting accountants would generally not be in a position to comment on matters primarily involving the exercise of management's business judgment. For example, the causes of changes between periods in gross profit ratios or net income may not necessarily be within the reporting accountants' knowledge and expertise. It would be appropriate for reporting accountants to comment on management's explanation of such changes only if they have obtained the necessary information by performing a separate assurance engagement in accordance with Hong Kong Standards on Auditing and Assurance.
34. Reporting accountants should not comment on the appropriateness of allocations made to derive segment information, since the accountants' report would typically encompass that information. In some cases, reporting accountants may be requested to make a statement as to the acceptability of methods of analysis or allocation used in deriving figures not reported in

the segment disclosures in the historical financial information. Whether reporting accountants may properly comment on the methodology applied will depend on the extent to which such allocation is made in, or can be derived directly by analysis or computation from, the issuer's accounting records. In any event, such comments, if made, should make clear that such allocations are to a substantial extent arbitrary, that the method of allocation used is not the only acceptable one, and that other acceptable methods of allocation might produce substantially different results.

*Further Guidance Relating to Non-financial Information*

35. Reporting accountants should comment only on matters to which their professional competence is relevant.
36. Reporting accountants may be asked to comment on a wide variety of non-financial information, ranging from information taken directly from the historical financial information to information which has no connection with the accounting records of the issuer.
37. Reporting accountants should not comment on information subject to legal interpretation, such as beneficial share ownership or contracts, or on matters such as engineering data or mineral reserves.
38. Any procedures reporting accountants agree to perform on non-financial information would be such as to add a measure of credibility to the information being commented on. Reporting accountants should not comment on matters merely because they happen to be present and are capable of reading, counting, measuring, or performing other functions that might be applicable. In most such cases, sponsors can derive the same degree of comfort with respect to the information by performing the procedures themselves. For reporting accountants to comment in the comfort letter on the performance of such mechanical functions on non-financial information can only add a degree of comfort which is unwarranted and may prove to be misleading.
39. Reporting accountants should comment on quantitative information other than financial information only when:
  - a. it has been obtained from accounting records that are subject to internal controls, policies and procedures of which reporting accountants have knowledge; or
  - b. it has been the subject of a separate assurance engagement performed in accordance with Hong Kong Standards on Auditing and Assurance.
40. Examples of matters on which comment would generally be inappropriate are the proposed use of proceeds of the issue, area of facilities, number of employees (except as related to a given payroll period), backlog information, contingent liabilities, commitments and the classification of assets and liabilities as secured or unsecured.

*Subsequent Changes*

41. For the change period, the reporting accountants' comments should be solely based on the limited procedures actually performed with respect to that period and that fact should be made clear in the comfort letter.
42. Frequently, reporting accountants are requested to comment on subsequent changes in items in the historical financial information. These changes, which should be restricted to components reported in the historical financial information, may include, for example, changes in share capital, increases in long-term debt, or increases or decreases in other specified financial statement items during a period (the "change period") beginning subsequent to the date and period of the historical financial information, and ending at the cut-off date (being the date to which certain procedures described in the letter are to relate, for example a date three business days before the date of the letter). Reporting accountants may also be requested to address such matters as subsequent changes in the amount of net current assets or net

assets, net sales, and the total and per-share amounts of both profit before taxation and net profit. The comments on subsequent changes should be limited to reporting changes in amounts, and should avoid addressing the reasons for such changes.

43. There may be internal financial statements such as management accounts available for one or more accounting periods following the date of the historical financial information. As a basis for commenting on subsequent changes, reporting accountants should read any such available internal financial statements (including comparative period amounts), and enquire of management as to whether such statements are prepared, in all material respects, on a basis consistent with that of the historical financial information reported on by the reporting accountants in the investment circular.
44. For both the period(s) covered by the available internal financial statements referred to in paragraph 43, and for the period between the date of the historical financial information and the cut-off date, the reporting accountants' procedures with respect to such changes should include reading minutes of meetings of shareholders, directors, and various committees and making inquiries of management relating to the whole of the change period.
45. Usually there will be a period immediately preceding the cut-off date for which complete accounting information is not yet available. Reporting accountants should consider whether it is appropriate to provide comfort with respect to changes, increases or decreases that may have occurred during this period. Frequently it would be possible for the officials consulted to explain the changes in some items (for example, long-term debt and share capital), but not others (for example, revenues and net income). It would be inappropriate for reporting accountants to give comfort if the officials consulted were unable to respond fully to inquiries about changes that may have occurred.
46. Usually a change in an accounting policy made during the change period should be disclosed in the historical financial information. If such disclosure is not made in the historical financial information, reporting accountants should describe the change in the comfort letter.
47. In order that comments on subsequent changes be unambiguous and their determination be within the reporting accountants' expertise, reporting accountants should not refer to "adverse changes" or "material adverse changes", or make similar general statements about developments during the change period.
48. Reporting accountants are sometimes asked to state in the comfort letter that there have been "no adverse changes" or "no material adverse changes", or to make similar general statements about developments during the change period. In order to avoid subjective determinations that are susceptible of misinterpretation, it is important that reporting accountants do not agree to provide such a comment in the comfort letter.
49. When it has come to the reporting accountants' attention that a change, increase or decrease in a financial statement item on which the reporting accountants have been asked to comment has occurred during the change period, all such instances of increase or decrease in the requested items are stated in the comfort letter.
50. Alternatively, when agreed between the parties, if the change, increase or decrease, actual or contemplated, is disclosed in the investment circular, the phrase "except for changes, increases or decreases that the investment circular discloses have occurred or may occur" can be included in the letter. When using this alternative presentation, if the amount of the change, increase or decrease is not disclosed in the investment circular, reporting accountants should note the amount of such change, increase or decrease in the comfort letter.
51. In the context of a comfort letter, an increase (or a decrease) occurs when the amount of a financial statement item at the cut-off date or for the change period (as if financial statements had been prepared at that date and for that period) is more (or less) than the amount of the same item at a specified earlier date or for a specified earlier period.

52. The change period for which reporting accountants provide comfort ends on the cut-off date and ordinarily begins, for balance sheet items, immediately after the date of the last balance sheet in the historical financial information and, for income statement items, immediately after the latest period for which such items are presented in the document.
53. The comparison relates to the entire period and not to portions of that period. For example, a decrease during one part of the period may be offset by an equal or larger increase in another part of the period; however, because there was no decrease for the period as a whole, the comfort letter should not report the decrease occurring during one part of the period.
54. The arrangement letter usually specifies the dates as of which, and periods for which, data at the cut-off date and data for the change period are to be compared. For balance sheet items, the comparison date is normally that of the latest balance sheet included in the historical financial information (that is, immediately prior to the beginning of the change period). For income statement items, the comparison period or periods should ordinarily be the corresponding period of the preceding year, but might be instead or might include in addition any period of corresponding length chosen by sponsors.
55. Whether or not specified in the arrangement letter, the date and period used in comparison should be identified in the comfort letter in both draft and final form so that there is no misunderstanding about the matters being compared and so that sponsors can determine whether the comparison date and period are suitable for the sponsors' purposes.
56. Limited assurance may only be provided on subsequent changes when the financial statements from which the changes are being measured have been subject to an audit or a review in accordance with standards within the Hong Kong Framework for Assurance Engagements. In addition, depending on the particular circumstances applicable to the engagement, reporting accountants may consider it inappropriate to provide limited assurance on subsequent changes. Factors that might be relevant include (but should not be limited to); the period of time since the latest financial information was subject to an assurance engagement, the extent that complete accounting information is not yet available, the extent that the internal financial statements have been prepared on a basis substantially consistent with that of the historical financial information included in the investment circular, and whether factual findings only are being provided in a separate comfort letter for the same transaction (e.g., in respect of an overseas tranche of the offering where a comfort letter is also being issued under a different framework to this HKSIR). Where limited assurance is not provided reporting accountants may instead include in the comfort letter the procedures performed and the factual findings (i.e., in the manner of agreed-upon-procedures), provided that there is an adequate basis to do so.
57. Reporting accountants should obtain written representations from management with respect to changes subsequent to the date of the historical financial information.
58. An illustration of the representations from management is included in Appendix 4 to this HKSIR.

## **Due Diligence Meetings**

59. As part of their due diligence investigation, sponsors frequently request one or more meetings ("due diligence meeting") with the issuer, reporting accountants, and legal counsel, at which the respective parties are requested to respond to specific questions raised by the sponsors. A due diligence meeting provides sponsors with an opportunity to obtain information required to fulfil their responsibilities. The questions asked may relate to the business of the issuer, information contained in the investment circular, the nature of the engagement undertaken by the reporting accountants, financial reporting, corporate governance, and other matters of interest to the sponsors.
60. Before attending a due diligence meeting with sponsors, reporting accountants should establish an understanding and agreement with the issuer's management and sponsors as to the basis on which the reporting accountants attend the due diligence meeting.

61. The terms of the arrangement for the reporting accountants' participation in the due diligence meeting are recorded in the arrangement letter among the issuer, the sponsors and the reporting accountants. However, in the event that the arrangement letter has not been executed prior to the due diligence meeting, the reporting accountants should obtain a written acknowledgement ("written acknowledgement") from the sponsors as to the basis on which the reporting accountants agree to attend the due diligence meeting before the signing of the arrangement letter. An example of such written acknowledgement is set out in Appendix 5A to this HKSIR.
62. Alternatively, the reporting accountants may enter into a master agreement with the sponsor to govern the basis on which the reporting accountants agree to attend the due diligence meeting prior to the execution of the arrangement letter, where the master agreement would apply to the due diligence meeting for each offering of securities for which the master agreement is in effect between the reporting accountants and the sponsor. An example of such master agreement is set out in Appendix 5B.
63. The terms under which the reporting accountants agree to participate in the due diligence meeting should be substantially the same regardless as to whether they are documented in the form of a written acknowledgement for a particular transaction, a master agreement between the reporting accountants and the sponsor, or in a fully executed arrangement letter.
64. Other matters to be agreed on might include management's consent to the reporting accountants' participation, management's undertaking to be represented in the due diligence meeting, and a waiver of normal confidentiality requirements, clearly specifying any limits on the reporting accountants' freedom to speak openly to the sponsors. For example, it should be established whether or not reporting accountants are free to discuss any management letters or internal control letters issued previously.
65. Reporting accountants should normally request, and sponsors may agree to provide in advance of the meeting, a list of the questions addressed to reporting accountants. Reporting accountants may wish to meet with the issuer's management to discuss the intended responses.
66. In a due diligence meeting, the reporting accountants' comments should be confined to matters properly relating to the engagement, including but not limited to:
  - a. the nature and duration of the engagement as reporting accountants;
  - b. the reporting accountants' professional standing and experience;
  - c. the scope of the reporting engagements and other professional work in connection with the investment circular;
  - d. the accountants' report and other published reports issued by reporting accountants;
  - e. the reporting accountants' relationship with the issuer's management, directors and audit committee or equivalent;
  - f. the reporting accountants' ability to deliver reports, consents, comfort letters and any other letters or reports in connection with the investment circular; and
  - g. new developments in accounting, or pending accounting changes which have had or may have in future an effect on the issuer's financial statements.
67. Reporting accountants should confine comments in the meeting to matters properly relating to the engagement as reporting accountants and to work undertaken in connection with the investment circular. It is essential that comments be restricted to those that reporting accountants should be prepared to put in writing, and such a communication could be made only if it met the requirements in this HKSIR. Reporting accountants should not comment on

matters primarily involving discussion and analysis of the results of operations and financial position of the issuer, unless this is the subject of a separate assurance engagement performed by the reporting accountants. Reporting accountants should generally decline to answer questions such as questions about the aggressiveness of the issuer's accounting policies or income tax practice, or questions as to the adequacy of the issuer's insurance coverage (except in relation to the fairness of presentation of the historical financial information), or questions on forward-looking statements or on a business plan. Any questions on such matters are properly addressed to the issuer's management, and should be responded to by management.

68. Further guidance as to the manner in which reporting accountants might respond to requests in a due diligence meeting is provided in Appendix 6 to this HKSIR.

### **Cross-Border and International Offerings**

69. When all or part of a securities offering for equity or debt is made overseas, reporting accountants may be requested to perform procedures and provide a separate comfort letter for the purposes of such offerings. In circumstances where there are no relevant standards governing the provision of a comfort letter in the overseas jurisdiction in which the offer is being made, reporting accountants refer to this HKSIR in establishing the scope of work to be performed and the form and content of the comfort letter to the sponsors (or persons fulfilling a similar role to sponsors in the relevant jurisdiction). A commonly encountered example of this is in the case of an international offering in conjunction with a Hong Kong public offering. In addition to providing a comfort letter under this HKSIR for the purposes of the Hong Kong public offering, the reporting accountants are typically requested to provide a separate comfort letter in respect of certain portions of the international offering. In such circumstances, with no requirement to follow any relevant jurisdictional standards, the reporting accountants refer to this HKSIR for the purposes of their comfort letter and due diligence meetings in relation to the relevant international tranche<sup>3</sup> (excluding any tranche to be offered in the United States, which will typically be covered by a comfort letter in the style of PCAOB auditing standards (AS) 6101 or AICPA Auditing Standards Board's clarified auditing standard (AU-C 920), as applicable<sup>4</sup>); thereby aligning standards for both the Hong Kong and relevant international portions of the offering.<sup>5</sup>

### **Effective Date**

70. This HKSIR is effective upon issue.

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<sup>3</sup> For example, to be offered in reliance on Regulation S under the U.S. Securities Act of 1933, as amended.

<sup>4</sup> For example, to be offered in reliance on Rule 144A under the U.S. Securities Act of 1933, as amended.

<sup>5</sup> In the context of paragraph 69, it is noted that comfort letters issued in connection with U.S. S.E.C. registered offerings of securities are normally issued following the guidance in PCAOB auditing standards 6101.

## Appendix 1

### **Example Arrangement Letter Relating to the Issuance of a Comfort Letter and Taking Part in Due Diligence Meetings**

*This arrangement letter has been developed in consultation with stakeholders. The contents of the arrangement letter will vary according to the nature of the information in the investment circular, and the procedures agreed between reporting accountants, sponsors and the issuer.*

*The examples below refer to an "arrangement letter" which is the terminology more commonly adopted to describe an engagement letter issued in respect to a comfort letter and the taking part in due diligence meetings. They do not cover terms and conditions that relate to the Issuer and reporting accountants only in connection with the engagement, (for example fee arrangements) which would typically be covered by a separate engagement letter between the Issuer and the reporting accountants. Paragraphs 12-14 are appropriate for when limited assurance is provided in relation to subsequent changes. When reporting accountants report on factual findings rather than providing limited assurance the wording should be revised accordingly.*

*As further explained in paragraph 69 of this HKSIR, where there is also an international offering not covered by relevant jurisdictional standards, reporting accountants shall refer to the requirements of HKSIR 400 (Revised). In practice for such cases, separate comfort letters will often be issued for the international and Hong Kong public offerings (due to, for example, different cut-off dates being applied for each). Separate arrangement letters may also be prepared, or alternatively, where for example the same addressees are applicable for both offerings, a combined letter covering both offerings may be issued. The example arrangement letters below illustrate the following situations: Example 1: a Public Offering in Hong Kong, Example 2: an International Offering in reliance on Regulation S ("Regulation S"), and Example 3: a Public Offering in Hong Kong and an International Offering in reliance on Regulation S (combined approach). Example 4 illustrates a letter with respect to a Debt Offering in reliance on Regulation S.*

**Example 1 – Public Offering in Hong Kong** (letterhead of reporting accountants)

[Date]

To: The Directors, XYZ Limited

Sponsors Limited

[Other Named Addressees and each of the Hong Kong underwriters as defined in the Hong Kong Underwriting Agreement dated [•] (the "Hong Kong Underwriters") that is an Addressee (as defined in Paragraph 3 below)<sup>6</sup>]

Dear Sirs,

**Comfort Letter and Other Assistance Relating to the Proposed Listing of XYZ Limited (the "Issuer") on the [Main Board/Growth Enterprise Market] of The Stock Exchange of Hong Kong Limited (the "Hong Kong Stock Exchange")**

**Introduction**

1. This arrangement letter sets out the scope and limitations of the work to be performed by us, being the reporting accountants of the Issuer, in connection with the issuance of a comfort letter and other assistance in respect of the above transaction, namely the proposed issue in Hong Kong of [•] (the "Issue") which will involve the preparation by the Issuer, and for which the Issuer will be solely responsible, of a prospectus in accordance with the [Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the "Listing Rules")]/[Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited (the "GEM Rules")] (the "Prospectus"). This arrangement letter is written in the context of the respective roles of the directors of the Issuer, Sponsors Limited (the "Sponsor") and the other Addressees (as defined below) and ourselves, in relation to the Issue. This arrangement letter does not apply to, and shall have no effect on, the rights and obligations of the Issuer, the Addressees or us in relation to the proposed international offering proposed to be conducted (the "International Offering") simultaneously with the Issue in Hong Kong, including any offering in the United States or elsewhere in the world or in connection with any actual or potential proceedings or disputes under U.S. federal or state securities laws relating to the International Offering.
2. The services we will provide in connection with the Issue (the "Services") will comprise:
  - provision of a comfort letter and where applicable, additional or updated comfort letter(s) (addressed to the directors of the Issuer and the Addressees) in connection with the Prospectus (the "Comfort Letter"), and
  - having meetings and discussions with the Addressees and their professional advisers and responding orally or otherwise to questions raised by them in connection with their due diligence regarding the Issue and the Prospectus (the "Other Assistance").

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<sup>6</sup> Named addressees of the arrangement letter and the comfort letter might include the sponsors, global coordinators, bookrunners, lead managers or other managing underwriters. These parties typically enter into the arrangement letter on behalf of the other underwriters of the Hong Kong public offering. It should not be necessary to name such other underwriters in the arrangement letter, since the prospectus and the Hong Kong underwriting agreement will clearly identify them. In certain circumstances, it may be appropriate to address a comfort letter to other parties, in which case such parties would also be appropriate parties to the arrangement letter. Typically, the sponsors and the lead and/or managing underwriters (however named in the underwriting agreement), would be the named addressees of the comfort letter.



**Addressees**

3. This arrangement letter is addressed to [the Sponsor(s), the Global Coordinator(s) and the Lead Manager(s)] (the "Named Addressees"), and to each of the Hong Kong Underwriters (as defined in the Prospectus) which has agreed (or after the date of this arrangement letter agrees) to participate in the Issue and which has, or prior to the issue of the Comfort Letter will have agreed to be bound by the terms of this arrangement letter, either by having validly authorised one or more of the signatories of this arrangement letter to enter into this arrangement letter on its behalf or validly ratified the entry into this arrangement letter on its behalf. The addressees of this arrangement letter (other than the Issuer) are collectively referred to herein as the "Addressees". By signing and accepting the terms of this arrangement letter, each Named Addressee confirms that it will use reasonable endeavours to obtain prima facie authority from each of the Hong Kong Underwriters authorising it to enter into this arrangement letter on the relevant underwriter's behalf. However, no Named Addressee makes any representation as to whether such prima facie authority actually confers the necessary authority.

**Comfort Letter**

4. The Comfort Letter and the Other Assistance will be provided to the Issuer for its information only, and to the Addressees solely in the context of the due diligence procedures being undertaken or procured to be undertaken by the Addressees in connection with the offering or sale of the securities in Hong Kong pursuant to the Prospectus, for the purpose of establishing or seeking to establish any defence in such context ("Due Diligence Defence") that the Addressees may wish to advance in any actual or potential court or arbitration proceedings, any investigation, hearing or other proceedings by any regulatory body, or any claim or dispute in respect of the Prospectus or otherwise in connection with the Issue. Accordingly, the Comfort Letter will be addressed to the Addressees for that purpose and neither the Comfort Letter nor the Other Assistance may be relied on by the Addressees for any other purpose. The Addressees are requesting the Comfort Letter in connection with the Issue as one of a number of procedures that the Addressees may use to establish the investigation that they have conducted.
5. Each Named Addressee confirms that it is aware of the due diligence guidance included in the [Listing Rules][GEM Rules], which will be followed.
6. For the avoidance of doubt and subject to the limitations or exclusions which are contained in or referred to in Paragraphs 7, 8, 24 and 30 of this arrangement letter, nothing in this arrangement letter shall preclude any Addressee from obtaining compensation from us in respect of any liability that it may incur to an investor arising out of the Issue or the contents of the Prospectus to the extent that such liability arises because the work undertaken pursuant to this arrangement letter or the Comfort Letter was undertaken negligently, in bad faith or as a result of our fraud or wilful default, it being understood that the foregoing is without prejudice to any defence of contributory negligence that may be available to us.
7. The Comfort Letter issued pursuant to this arrangement letter will be provided in accordance with the standards of the Hong Kong Institute of Certified Public Accountants (the "HKICPA") and will not have been provided in accordance with any other professional standards, including but not limited to those of the American Institute of Certified Public Accountants. Accordingly, the Comfort Letter should not be relied upon in connection with any obligations or responsibilities that the Addressees may have under any legislation, regulations and/or rule of law other than those of Hong Kong and, in the event of any such use in any jurisdiction other than Hong Kong, we accept no responsibility in this regard.
8. Our work and findings shall not in any way constitute advice or recommendations (and we accept no liability in relation to any advice or recommendations) regarding any commercial decisions associated with the Issue, including, in particular, but without limitation, any which may be taken by any Addressee (or any person connected to any Addressee) in the capacity of investor or in providing investment advice to their clients.

9. The Comfort Letter will be provided solely for the Addressees' private information and should not be used for any purpose other than as set out in Paragraph 4. The Comfort Letter may not be referred to in any other document (except that references may be made to its existence in (i) contracts among any of the Issuer, the Addressees and ourselves and (ii) any communications in relation to the Issue among any of the Issuer, the Addressees, the underwriters of the International Offering and ourselves), nor made available to any other party (except that copies may be included in bibles of transaction documents memorialising the Issue).
10. Nothing in Paragraphs 4, 7 or 9 shall prevent the Addressees from disclosing this arrangement letter and the Comfort Letter to the Addressees' professional advisers or as may be required by law, regulation or court order or the rules or requirements of a regulatory body or stock exchange whose requirements the Addressees are complying with, and/or referring to and/or producing the Comfort Letter for any of the purposes set out in Paragraph 4. Except as permitted in the immediately preceding sentence, the Addressees shall first obtain our prior written consent for disclosure of the Comfort Letter to third parties.
11. Other than to those who have, or before the Comfort Letter is issued shall have, validly accepted this arrangement letter, we will not accept any responsibility to any party to whom the Comfort Letter is shown or into whose hands it may come.

### Work and Procedures

12. Our work will be conducted in accordance with Hong Kong Standard on Investment Circular Reporting Engagements 400 (Revised), *Comfort Letters and Due Diligence Meetings* issued by the HKICPA. Specifically, our work will enable us to report factual findings in relation to selected financial information and to enable us to provide limited assurance on subsequent changes to historical financial information included in the Prospectus. [Procedures undertaken in connection with providing limited assurance on interim financial information will be conducted with reference to Hong Kong Standard on Review Engagements ("HKSRE") 2410.<sup>7</sup>] In other jurisdictions, standards and practices relevant to reporting accountants may be different and may not provide for reporting in the manner contemplated herein. Accordingly, the Comfort Letter should not be relied on as if it had been provided in accordance with the standards and practice of any professional body in any other jurisdiction.
13. Except as specifically stated in our comfort letter we have not performed an audit or review in respect of any financial information relating to the Issuer for any period subsequent to [date of last reported balance sheet] in accordance with Hong Kong Standards on Auditing ("HKSA") or [Hong Kong Standards on Review Engagements ("HKSREs")][HKSREs] issued by the HKICPA. The procedures we will use to perform the work set out in this arrangement letter including those in relation to subsequent changes will not constitute an audit or review made in accordance with HKSA or HKSREs issued by the HKICPA. Furthermore, they will not necessarily reveal matters of significance with respect to any material misstatement of the information referred to below.
14. We will only carry out those procedures expressly provided for in the Comfort Letter. Accordingly, we make no representations as to the sufficiency for the Addressees' purposes of the procedures provided for in the Comfort Letter and, therefore, our responsibility shall be limited to performing the work agreed upon in this arrangement letter and/or recorded in the Comfort Letter with due skill, care and attention. If we were to perform additional procedures or if we were to conduct an audit or review on the financial information of the Issuer in accordance with HKSA or HKSREs issued by the HKICPA, other matters might be reported to the Addressees in the Comfort Letter. The procedures to be performed by us in connection with the Comfort Letter should not be taken to supplant additional inquiries or procedures that may be appropriate in the performance of the Addressees' role under the proposed Issue.

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<sup>7</sup> In certain situations the reporting accountant may be required to perform a review of interim financial information in order to enable negative assurance to be provided on subsequent changes. This sentence should be included where such a review will be undertaken.

15. In relation to the contents of the Prospectus, we will address ourselves solely to such financial and other information in the Prospectus as is identified in the Comfort Letter and we will make no representations as to the adequacy of disclosure in the Prospectus or as to whether any material facts have been omitted by the Issuer. Further, we make no representations regarding any questions of legal interpretation.
16. The procedures that we plan to conduct have been determined by the Named Addressees and agreed by the parties to this arrangement letter, and will be recorded in the Comfort Letter. In carrying out our work pursuant to this arrangement letter, we will rely on the accuracy and completeness of certain information and explanations provided to us during the course of our work and will further request the directors of the Issuer to provide us with written representations concerning the accuracy and completeness of certain information and explanations provided to us for the purpose of our work. The Addressees will therefore understand that the procedures to be carried out by us are not designed to, and are not likely to, reveal fraud, withholding, concealment or misrepresentation by the management of the Issuer or its subsidiaries (the Issuer and its subsidiaries are collectively referred to herein as "the Group"). Notwithstanding the preceding three sentences, if in carrying out the procedures agreed under this arrangement letter, and solely as a result of information provided to us which we are required to consider or do consider, we conclude that there has been fraud, withholding, concealment or misrepresentation (or otherwise we conclude that any such information contains an inconsistency which clearly indicates that there may have been such a fraud, withholding, concealment or misrepresentation), we will (and are hereby authorised by the Issuer to), as soon as practicable, notify the Issuer and the Named Addressees of this and discuss with them whether further procedures can be designed to seek to resolve the matter. Where such procedures are agreed between us, we will carry them out and amend the Comfort Letter accordingly.
17. Any opinions expressed on financial information outside the context of this arrangement letter were or are expressed solely in the context of the specific terms and conditions governing their preparation. In particular, the terms of this arrangement letter and any action pursuant to it shall be additional to and shall not detract from or change in any way any legal rights which any party to this arrangement letter may otherwise have acquired, whether in contract or in tort, in connection with our reporting on the historical financial information of the Issuer.
18. Save as may be expressly recorded in the Comfort Letter, we do not accept any responsibility for any other reports or letters beyond any responsibility that we owed to those to whom our reports or letters were addressed at the date of their issue.

### **Contents of the Comfort Letter**

19. We will prepare and expect to issue the Comfort Letter addressed to the Issuer and the Addressees on the basis described above. Based upon our present understanding of the Addressees' requirements, we expect to be able to provide the Addressees with the Comfort Letter substantially in the form contained in the Appendix to this arrangement letter, setting out the procedures that we expect to carry out prior to issuing the Comfort Letter.<sup>8</sup> Execution of this arrangement letter by the Named Addressees will constitute the Addressees' agreement to the scope and extent of such procedures.
20. We would be grateful if the Named Addressees would review the draft comfort letter that we expect to be able to provide the Addressees with and let us have any amendments the Named Addressees propose to the procedures as soon as possible, so that we can provide the Named Addressees with a revised draft for further consideration and approval.
21. Once an advanced draft of the Prospectus is available and the Named Addressees have identified, and we have agreed, the detailed financial information whose extraction or calculation the Named Addressees require to be covered in the Comfort Letter, we will provide the Named Addressees with a further revised draft of the Comfort Letter for approval of its scope prior to finalisation. We would expect to provide such a draft shortly before the draft Prospectus is first submitted to the Hong Kong Stock Exchange.

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<sup>8</sup> Where a draft comfort letter is not appended, briefly explain the procedures to be performed.

22. For the avoidance of doubt, we will not comment on, or otherwise give comfort in relation to, the Issuer's prospects or trading position or, save as expressly stated in the Comfort Letter, comment on or provide any opinion or other conclusion as to the current overall financial position of the Issuer.<sup>9</sup>

### Drafts

23. During the course of the arrangement we may show drafts of, or report orally on, the Comfort Letter to the Named Addressees. In so far as any such draft or oral report is inconsistent with the subsequent final Comfort Letter, it will be deemed to be superseded by such final Comfort Letter.

### Meetings

24. It will be necessary for us to receive copies of the draft Prospectus as it is produced and it may be necessary for us to attend meetings (including, but not limited to, meetings with the Issuer and its directors and/or employees and the Addressees and their employees, advisers or agents) at which the Prospectus is discussed and drafted or at which other related matters are discussed. We shall answer queries raised at such meetings on an informal basis but the Addressees should neither act nor refrain from acting on the basis of such informal answers unless and until they are confirmed in writing by us, whether in the final Comfort Letter or otherwise. In the absence of such written confirmation we shall have no liability to the Addressees in contract or in tort (including negligence) for our answers other than for an oral statement known to be false or misleading when made and made with intent to deceive.<sup>10</sup> Subject to the above, nothing in this paragraph shall prejudice the Addressees' ability to rely on a non-recourse basis (meaning without any liability on our part except for oral statements known to be false or misleading when made and made with intent to deceive) on any comments we may provide orally, either in the context of establishing or seeking to establish any Due Diligence Defence in connection with any court, arbitral, regulatory or administrative proceedings or otherwise for the purposes of resolving either actual or potential proceedings, investigations, claims or disputes in respect of the Prospectus or otherwise in connection with the Issue.
25. Unless otherwise specifically agreed between the Issuer, the Named Addressees and us, we are authorised by the Issuer to speak to the Addressees and other professional advisers advising on the proposed Issue. In connection with our work pursuant to this arrangement letter, we may release to the Addressees and such other professional advisers any information relating to the Issuer or the Issue, whether confidential or not, and whether obtained during the course of our work or otherwise, and shall not be liable to the Issuer for any use subsequently made of that information. Our partners and staff working on this arrangement shall not be required, expected or deemed to have knowledge of any information known to other partners or staff of our firm but which is not known to those on this arrangement. In addition we shall not be required to make use of or disclose to the Addressees any information which is confidential to another client of our firm.

### Timetable

26. Our work will depend upon receiving without undue delay full co-operation from all relevant officials of the Issuer and the Group and their disclosure to us of all accounting records of the Group and all other records and related information (including certain representations) we may need for the purposes of our work. We will endeavour to carry out our work in accordance with a timetable to be agreed between all parties that will satisfy the requirements of the Issue. We intend to provide the Issuer and the Addressees with (1) the Comfort Letter dated the date of the Prospectus relating to the Issue, (2) an additional or updating Comfort Letter on and dated the date of the closing of the Issue (to be delivered at closing of the Issue) and (3) where appropriate, an additional or updating Comfort Letter on and dated the over-allotment option

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<sup>9</sup> If specific procedures and appropriate terms (e.g. as to timing) are agreed between all parties, the reporting accountants may undertake additional work in accordance with HKSIR 400 (Revised).

<sup>10</sup> If specific matters are discussed which the Addressees wish to be able to rely upon in accordance with this arrangement letter, the Issuer and the Named Addressees should arrange for them to be confirmed in writing by reporting accountants. If the reporting accountants are willing to confirm such matters in writing, further work and an extension of the terms of the arrangement are likely to be required.

closing date.<sup>11</sup> In connection with the delivery of any new or updating Comfort Letter, we will bring down our work to an agreed cut-off date. We will discuss with the Named Addressees any difficulties we encounter with this arrangement or with meeting the timetable as soon as any problems arise.

### **Applicable Law and Jurisdiction**

27. This arrangement letter shall be governed by, and construed in accordance with, Hong Kong law. The Courts of Hong Kong shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this arrangement letter, the Comfort Letter or any matter arising from them.

### **Staffing**

28. [Name] will be the partner in charge of the services we will provide. [Name] will act as manager, with the help of [name], calling upon specialist staff as appropriate. We shall use reasonable endeavours to ensure that they are so involved but we may substitute those identified with others of equal or similar skills.

### **Fees and Certain Other Matters**

29. Details of our fees and proposed billing arrangements have been set out in a separate agreement with the Issuer, who will bear the sole responsibility for the payment thereof. Such agreement also sets out certain other matters in relation to the respective rights and responsibilities of the Issuer and us in connection with the services to be performed by us in connection with the issuance of the Comfort Letter.

### **Other Terms and Conditions**

30. In no circumstances shall we be liable, other than in the event of our fraud, bad faith or wilful default, for any loss or damage, of whatsoever nature, arising from information material to our work being withheld or concealed from us or misrepresented to us by the directors, employees, or agents of the Issuer or any other person of whom we may make inquiries unless, if in carrying out the procedures agreed under this arrangement letter, and solely as a result of information provided to us which we are required to consider or do consider, we conclude that there has been fraud, withholding, concealment or misrepresentation (or otherwise we conclude that any such information contains an inconsistency which clearly indicates that there may have been such a fraud, withholding, concealment or misrepresentation), and we fail to notify the Issuer and the Named Addressees of such conclusion.
31. In the course of providing the Services we, [Accountants] Hong Kong, may, at our discretion, draw on the resource of other entities (whether or not incorporated) which carry on business under a name which includes all or part of the [Accountants] name or is otherwise within (or associated or connected with an entity) or is a correspondent firm of the worldwide network of [Accountants] ("other [Accountants] Firms") and their partners and employees as we deem appropriate, but provision of the Services will remain our responsibility alone.
32. The Addressees agree that the Addressees will not bring any claim (whether in contract, tort (including negligence) or otherwise) against any other [Accountants] Firm or its personnel in respect of the Services. Any partner or employee of any other [Accountants] Firm who deals with the Addressees in connection with the Services does so solely on our behalf and we are liable for their activities as if they were in all respects our partners or staff.
33. The Addressees will not bring any claim (whether in contract, tort (including negligence) or otherwise) arising out of or in connection with the Services against any of our employees personally, but this will not limit or exclude any liability we may have for their acts or omissions.

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<sup>11</sup> In exceptional circumstances, it may also be appropriate to bring down the Comfort Letter to another date. Such arrangements should be discussed on a case-by-case basis.

34. The provisions of paragraphs 31 to 33 of this arrangement letter have been stipulated expressly for the benefit of our employees, and other [Accountants] Firms and their partners and employees (together "Beneficiaries"). The Addressees agree that, each of the Beneficiaries has the right to rely on paragraphs 31 to 34 of this arrangement letter as if they were parties to this arrangement letter. Each of the other [Accountants] Firms which agrees to assist in the provision of the Services does so in reliance on the protections afforded to it by paragraphs 31 to 34 of this arrangement letter, the benefit of which we formally accept on its behalf.

#### **Prohibition on Assignment**

35. No party may assign any of its rights in relation to this arrangement letter without the prior written consent of the others against whom the rights may be asserted, save that any Addressee and we may assign any of such rights, or such rights may pass by operation of law, to any successor to all or part of its business without such consent, provided that notice is given to the other signatories to this arrangement letter prior to any step being taken to enforce any rights hereunder.

#### **Third Party Rights**

36. Other than as set out in paragraph 34 above, this arrangement letter shall not create or give rise to, nor shall it be intended to create or give rise to, any third party rights and no third party shall have any right to enforce or rely on any provision of this arrangement letter. Save where otherwise stated in paragraph 34 above, the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the laws of Hong Kong) shall not under any circumstances apply to this arrangement letter. Any rights conferred on third parties by this arrangement letter exclude the right to assign, and their consent is not required to rescind or vary this arrangement letter. For the avoidance of doubt, this paragraph shall not apply to the Addressees or the successors referred to in paragraph 35 above.

#### **Termination**

37. Any party to this arrangement letter may at any time terminate this arrangement letter for whatever reason upon written notice to the other parties. In the case of termination by us, notice to the Issuer and the Named Addressees shall be sufficient notice.
38. Termination of this arrangement letter shall be without prejudice to any accrued rights of the parties to this arrangement letter. The provisions of this arrangement letter which expressly or by implication are intended to survive its termination or expiry will survive and continue to bind each party to this arrangement letter.

#### **Internet communication**

39. In connection with the Services the parties to this arrangement letter may from time to time communicate with each other electronically. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly each party to this arrangement letter accepts the limitations of electronic communication, and will use reasonable procedures to check for the then most commonly known viruses before sending information electronically.

#### **Miscellaneous**

40. Other than as set out in paragraph 29 above, this arrangement letter and the Appendix to it constitute the entire agreement for the provision of the Services between us to the exclusion of any other express or implied terms, whether expressed orally or in writing, including any conditions, warranties and representations and shall supersede all previous proposals, understandings, contracts, letters of engagement, undertakings, agreements and correspondence regarding the Services. Save as provided in this arrangement letter, no change in the terms of our arrangement with respect to the Services will be effective unless agreed in writing and signed by all parties to this arrangement letter.

41. This arrangement letter may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed and delivered at least one counterpart. Each counterpart shall constitute an original of this arrangement letter, but all the counterparts shall together constitute one and the same instrument.
42. If any term or terms of this arrangement letter shall be held to be invalid, illegal or unenforceable, such term or terms shall be deemed not to form part of this arrangement letter without prejudice to the enforceability of the remaining terms of this arrangement letter, provided always that if any such deletion substantially affects or alters the commercial basis of this arrangement letter, the parties to this arrangement letter will negotiate in good faith to amend and modify them as may be necessary or desirable in the circumstances.
43. Please acknowledge acceptance of the terms of our arrangement by signing and returning the enclosed copy of this arrangement letter.
44. If the Issuer or the Addressees have any questions regarding this arrangement letter please do not hesitate to contact us.

Yours faithfully,

ABC & Co.  
Certified Public Accountants (Practising) [or Certified Public Accountants]  
Hong Kong  
Date

#### **Acknowledgement and Acceptance**

We acknowledge receipt of this arrangement letter and agree with the terms of your arrangement set out therein:

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Director  
for and on behalf of  
the board of XYZ Limited

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Director  
for and on behalf of  
Sponsors Limited/ [Named Addressee]  
(on its own behalf and on behalf of  
each of the Hong Kong Underwriters)

**Example 2 – International Offering in reliance on Regulation S**

(letterhead of reporting accountants)

[Date]

To: The Directors, XYZ Limited

Lead Manager Limited

[Other Named Addressees and each of the other international underwriters as defined in the International Underwriting Agreement dated [•] (the "International Underwriters") that is an Addressee (as defined in Paragraph 3 below)<sup>12</sup>]

Dear Sirs,

**Comfort Letter and Other Assistance Relating to the Proposed International Offering of the Ordinary Shares of XYZ Limited (the "Issuer") in reliance on Regulation S under the U.S. Securities Act of 1933, as amended (the "Securities Act")**

**Introduction**

1. This arrangement letter sets out the scope and limitations of the work to be performed by us, being the reporting accountants of the Issuer, in connection with the issuance of a comfort letter and other assistance in respect of the above transaction, namely the proposed international offering outside of the United States of America in reliance on Regulation S under the Securities Act (the "Regulation S Offering") of [•] (the "Issue") which will involve the preparation by the Issuer, and for which the Issuer will be solely responsible, of an offering memorandum, that may be delivered to investors and utilised by them as a basis for their investment decisions (the "Offering Memorandum"). This arrangement letter is written in the context of the respective roles of the directors of the Issuer, Lead Manager Limited (the "Lead Manager") and the other Addressees (as defined below) and ourselves, in relation to the Issue. This arrangement letter does not apply to, and shall have no effect on, the rights and obligations of the Issuer, the Addressees or us in relation to the proposed public offering in Hong Kong, or any offering in the United States proposed to be conducted simultaneously with the Regulation S Offering.
2. The services we will provide in connection with the Issue (the "Services") will comprise:
  - provision of a comfort letter and where applicable, additional or updated comfort letter(s) (addressed to the directors of the Issuer and the Addressees) in connection with the Offering Memorandum (the "Comfort Letter"), and
  - having meetings and discussions with the Addressees and their professional advisers and responding orally or otherwise to questions raised by them in connection with their due diligence regarding the Issue and the Offering Memorandum (the "Other Assistance").

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<sup>12</sup> Named addressees of the arrangement letter and the comfort letter might include the global coordinators, bookrunners, lead managers or other managing underwriters. These parties typically enter into the arrangement letter on behalf of the other underwriters of the Regulation S offering. It should not be necessary to name such other underwriters in the arrangement letter, since the offering memorandum and the international underwriting agreement will clearly identify them. In certain circumstances, it may be appropriate to address a comfort letter to other parties, in which case such parties would also be appropriate parties to the arrangement letter. Typically, the lead and/or managing underwriters (however named in the underwriting agreement), would be the named addressees of the comfort letter.



**Addressees**

3. This arrangement letter is addressed to [the Global Coordinator(s) and the Lead Manager(s)] (the "Named Addressees"), and to each of the other International Underwriters (as defined in the Offering Memorandum) which has agreed (or after the date of this arrangement letter agrees) to participate in the Issue and which has, or prior to the issue of the Comfort Letter will have agreed to be bound by the terms of this arrangement letter, either by having validly authorised one or more of the signatories of this arrangement letter to enter into this arrangement letter on its behalf or validly ratified the entry into this arrangement letter on its behalf. The addressees of this arrangement letter (other than the Issuer) are collectively referred to herein as the "Addressees". By signing and accepting the terms of this arrangement letter, each Named Addressee confirms that it will use reasonable endeavours to obtain prima facie authority from each of the other International Underwriters authorising it to enter into this arrangement letter as representative of the relevant underwriter. However, no Named Addressee makes any representation as to whether such prima facie authority actually confers the necessary authority.

**Comfort Letter**

4. The Comfort Letter and the Other Assistance will be provided to the Issuer for its information only, and to the Addressees solely in the context of the due diligence procedures being undertaken or procured to be undertaken by the Addressees in connection with the offering or sale of the securities outside of the United States under Regulation S pursuant to the Offering Memorandum, for the purpose of establishing or seeking to establish any defence in such context ("Due Diligence Defence") that the Addressees may wish to advance in any actual or potential court or arbitration proceedings, any investigation, hearing or other proceedings by any regulatory body, or any claim or dispute in respect of the Offering Memorandum or otherwise in connection with the Issue. Accordingly, the Comfort Letter will be addressed to the Addressees for that purpose and neither the Comfort Letter nor the Other Assistance may be relied on by the Addressees for any other purpose. The Addressees are requesting the Comfort Letter in connection with the Issue as one of a number of procedures that the Addressees may use to establish the investigation that they have conducted.
5. Each Named Addressee confirms that it is aware of the due diligence guidance [issued by *name of framework/organization, e.g., the International Capital Market Association*][included in the [Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited]/[Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited]], which will be followed.
6. For the avoidance of doubt and subject to the limitations or exclusions which are contained in or referred to in Paragraphs 7, 8, 24 and 30 of this arrangement letter, nothing in this arrangement letter shall preclude any Addressee from obtaining compensation from us in respect of any liability that it may incur to an investor arising out of the Issue or the contents of the Offering Memorandum to the extent that such liability arises because the work undertaken pursuant to this arrangement letter or the Comfort Letter was undertaken negligently, in bad faith or as a result of our fraud or wilful default, it being understood that the foregoing is without prejudice to any defence of contributory negligence that may be available to us.
7. The Comfort Letter issued pursuant to this arrangement letter will be provided in accordance with the standards of the Hong Kong Institute of Certified Public Accountants (the "HKICPA") and will not have been provided in accordance with any other professional standards, including but not limited to those of the American Institute of Certified Public Accountants.
8. Our work and findings shall not in any way constitute advice or recommendations (and we accept no liability in relation to any advice or recommendations) regarding any commercial decisions associated with the Issue, including, in particular, but without limitation, any which may be taken by any Addressee (or any person connected to any Addressee) in the capacity of investor or in providing investment advice to their clients.
9. The Comfort Letter will be provided solely for the Addressees' private information and should not be used for any purpose other than as set out in Paragraph 4. The Comfort Letter may not be referred to in any other document (except that references may be made to its existence in (i)

contracts among any of the Issuer, the Addressees and ourselves and (ii) any communications in relation to the Issue among any of the Issuer, the Addressees, the Sponsors of the Hong Kong Public Offering, the International Underwriters and ourselves), nor made available to any other party (except that copies may be included in bibles of transaction documents memorialising the Issue).

10. Nothing in Paragraphs 4, 7 or 9 shall prevent the Addressees from disclosing this arrangement letter and the Comfort Letter to the Addressees' professional advisers or as may be required by law, regulation or court order or the rules or requirements of a regulatory body or stock exchange whose requirements the Addressees are complying with, and/or referring to and/or producing the Comfort Letter for any of the purposes set out in Paragraph 4. Except as permitted in the immediately preceding sentence, the Addressees shall first obtain our prior written consent for disclosure of the Comfort Letter to third parties.
11. Other than to those who have, or before the Comfort Letter is issued shall have, validly accepted this arrangement letter, we will not accept any responsibility to any party to whom the Comfort Letter is shown or into whose hands it may come.

### Work and Procedures

12. Our work will be conducted in accordance with Hong Kong Standard on Investment Circular Reporting Engagements 400 (Revised), *Comfort Letters and Due Diligence Meetings* issued by the HKICPA. Specifically, our work will enable us to report factual findings in relation to selected financial information and to enable us to provide limited assurance on subsequent changes to historical financial information included in the Offering Memorandum. [Procedures undertaken in connection with providing limited assurance on interim financial information will be conducted with reference to Hong Kong Standard on Review Engagements ("HKSRE") 2410.<sup>13</sup>] In other jurisdictions, standards and practices relevant to reporting accountants may be different and may not provide for reporting in the manner contemplated herein. Accordingly, the Comfort Letter should not be relied on as if it had been provided in accordance with the standards and practice of any professional body in any other jurisdiction.
13. Except as specifically stated in our comfort letter we have not performed an audit or review in respect of any financial information relating to the Issuer for any period subsequent to [date of last reported balance sheet] in accordance with Hong Kong Standards on Auditing ("HKSA") or [Hong Kong Standards on Review Engagements ("HKSREs")][HKSREs] issued by the HKICPA. The procedures we will use to perform the work set out in this arrangement letter including those in relation to subsequent changes will not constitute an audit or review made in accordance with HKSA or HKSREs issued by the HKICPA. Furthermore, they will not necessarily reveal matters of significance with respect to any material misstatement of the information referred to below.
14. We will only carry out those procedures expressly provided for in the Comfort Letter. Accordingly, we make no representations as to the sufficiency for the Addressees' purposes of the procedures provided for in the Comfort Letter and, therefore, our responsibility shall be limited to performing the work agreed upon in this arrangement letter and/or recorded in the Comfort Letter with due skill, care and attention. If we were to perform additional procedures or if we were to conduct an audit or review on the financial information of the Issuer in accordance with HKSA or HKSREs issued by the HKICPA, other matters might be reported to the Addressees in the Comfort Letter. The procedures to be performed by us in connection with the Comfort Letter should not be taken to supplant additional inquiries or procedures that may be appropriate in the performance of the Addressees' role under the proposed Issue.

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<sup>13</sup> In certain situations the reporting accountant may be required to perform a review of interim financial information in order to enable negative assurance to be provided on subsequent changes. This sentence should be included where such a review will be undertaken.

15. In relation to the contents of the Offering Memorandum, we will address ourselves solely to such financial and other information in the Offering Memorandum as is identified in the Comfort Letter and we will make no representations as to the adequacy of disclosure in the Offering Memorandum or as to whether any material facts have been omitted by the Issuer. Further, we make no representations regarding any questions of legal interpretation.
16. The procedures that we plan to conduct have been determined by the Named Addressees and agreed by the parties to this arrangement letter, and will be recorded in the Comfort Letter. In carrying out our work pursuant to this arrangement letter, we will rely on the accuracy and completeness of certain information and explanations provided to us during the course of our work and will further request the directors of the Issuer to provide us with written representations concerning the accuracy and completeness of certain information and explanations provided to us for the purpose of our work. The Addressees will therefore understand that the procedures to be carried out by us are not designed to, and are not likely to, reveal fraud, withholding, concealment or misrepresentation by the management of the Issuer or its subsidiaries (the Issuer and its subsidiaries are collectively referred to herein as "the Group"). Notwithstanding the preceding three sentences, if in carrying out the procedures agreed under this arrangement letter, and solely as a result of information provided to us which we are required to consider or do consider, we conclude that there has been fraud, withholding, concealment or misrepresentation (or otherwise we conclude that any such information contains an inconsistency which clearly indicates that there may have been such a fraud, withholding, concealment or misrepresentation), we will (and are hereby authorised by the Issuer to), as soon as practicable, notify the Issuer and the Named Addressees of this and discuss with them whether further procedures can be designed to seek to resolve the matter. Where such procedures are agreed between us, we will carry them out and amend the Comfort Letter accordingly.
17. Any opinions expressed on financial information outside the context of this arrangement letter were or are expressed solely in the context of the specific terms and conditions governing their preparation. In particular, the terms of this arrangement letter and any action pursuant to it shall be additional to and shall not detract from or change in any way any legal rights which any party to this arrangement letter may otherwise have acquired, whether in contract or in tort, in connection with our reporting on the historical financial information of the Issuer.
18. Save as may be expressly recorded in the Comfort Letter, we do not accept any responsibility for any other reports or letters beyond any responsibility that we owed to those to whom our reports or letters were addressed at the date of their issue.

#### **Contents of the Comfort Letter**

19. We will prepare and expect to issue the Comfort Letter addressed to the Issuer and the Addressees on the basis described above. Based upon our present understanding of the Addressees' requirements, we expect to be able to provide the Addressees with the Comfort Letter substantially in the form contained in the Appendix to this arrangement letter, setting out the procedures that we expect to carry out prior to issuing the Comfort Letter.<sup>14</sup> Execution of this arrangement letter by the Named Addressees will constitute the Addressees' agreement to the scope and extent of such procedures.
20. We would be grateful if the Named Addressees would review the draft comfort letter that we expect to be able to provide the Addressees with and let us have any amendments the Named Addressees propose to the procedures as soon as possible, so that we can provide the Named Addressees with a revised draft for further consideration and approval.
21. Once an advanced draft of the Offering Memorandum is available and the Named Addressees have identified, and we have agreed, the detailed financial information whose extraction or calculation the Named Addressees require to be covered in the Comfort Letter, we will provide the Named Addressees with a further revised draft of the Comfort Letter for approval of its scope prior to finalisation.

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<sup>14</sup> Where a draft comfort letter is not appended, briefly explain the procedures to be performed.

22. For the avoidance of doubt, we will not comment on, or otherwise give comfort in relation to, the Issuer's prospects or trading position or, save as expressly stated in the Comfort Letter, comment on or provide any opinion or other conclusion as to the current overall financial position of the Issuer.<sup>15</sup>

### Drafts

23. During the course of the arrangement we may show drafts of, or report orally on, the Comfort Letter to the Named Addressees. In so far as any such draft or oral report is inconsistent with the subsequent final Comfort Letter, it will be deemed to be superseded by such final Comfort Letter.

### Meetings

24. It will be necessary for us to receive copies of the draft Offering Memorandum as it is produced and it may be necessary for us to attend meetings (including, but not limited to, meetings with the Issuer and its directors and/or employees and the Addressees and their employees, advisers or agents) at which the Offering Memorandum is discussed and drafted or at which other related matters are discussed. We shall answer queries raised at such meetings on an informal basis but the Addressees should neither act nor refrain from acting on the basis of such informal answers unless and until they are confirmed in writing by us, whether in the final Comfort Letter or otherwise. In the absence of such written confirmation we shall have no liability to the Addressees in contract or in tort (including negligence) for our answers other than for an oral statement known to be false or misleading when made and made with intent to deceive.<sup>16</sup> Subject to the above, nothing in this paragraph shall prejudice the Addressees' ability to rely on a non-recourse basis (meaning without any liability on our part except for oral statements known to be false or misleading when made and made with intent to deceive) on any comments we may provide orally, either in the context of establishing or seeking to establish any Due Diligence Defence in connection with any court, arbitral, regulatory or administrative proceedings or otherwise for the purposes of resolving either actual or potential proceedings, investigations, claims or disputes in respect of the Offering Memorandum or otherwise in connection with the Issue.
25. Unless otherwise specifically agreed between the Issuer, the Named Addressees and us, we are authorised by the Issuer to speak to the Addressees and other professional advisers advising on the proposed Issue. In connection with our work pursuant to this arrangement letter, we may release to the Addressees and such other professional advisers any information relating to the Issuer or the Issue, whether confidential or not, and whether obtained during the course of our work or otherwise, and shall not be liable to the Issuer for any use subsequently made of that information. Our partners and staff working on this arrangement shall not be required, expected or deemed to have knowledge of any information known to other partners or staff of our firm but which is not known to those on this arrangement. In addition we shall not be required to make use of or disclose to the Addressees any information which is confidential to another client of our firm.

### Timetable

26. Our work will depend upon receiving without undue delay full co-operation from all relevant officials of the Issuer and the Group and their disclosure to us of all accounting records of the Group and all other records and related information (including certain representations) we may need for the purposes of our work. We will endeavour to carry out our work in accordance with a timetable to be agreed between all parties that will satisfy the requirements of the Issue. We intend to provide the Issuer and the Addressees with (1) the Comfort Letter dated the date of the Offering Memorandum relating to the Issue, (2) an additional or updating Comfort Letter on and dated the date of the closing of the Issue (to be delivered at closing of the Issue) and (3) where appropriate, an additional or updating Comfort Letter on and dated the over-allotment

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<sup>15</sup> If specific procedures and appropriate terms (e.g. as to timing) are agreed between all parties, the reporting accountants may undertake additional work in accordance with HKSIR 400 (Revised).

<sup>16</sup> If specific matters are discussed which the Addressees wish to be able to rely upon in accordance with this arrangement letter, the Issuer and the Named Addressees should arrange for them to be confirmed in writing by reporting accountants. If the reporting accountants are willing to confirm such matters in writing, further work and an extension of the terms of the arrangement are likely to be required.

option closing date.<sup>17</sup> In connection with the delivery of any new or updating Comfort Letter, we will bring down our work to an agreed cut-off date. We will discuss with the Named Addressees any difficulties we encounter with this arrangement or with meeting the timetable as soon as any problems arise.

### **Applicable Law and Jurisdiction**

27. This arrangement letter shall be governed by, and construed in accordance with, Hong Kong law. The Courts of Hong Kong shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this arrangement letter, the Comfort Letter or any matter arising from them.

### **Staffing**

28. [Name] will be the partner in charge of the services we will provide. [Name] will act as manager, with the help of [name], calling upon specialist staff as appropriate. We shall use reasonable endeavours to ensure that they are so involved but we may substitute those identified with others of equal or similar skills.

### **Fees and Certain Other Matters**

29. Details of our fees and proposed billing arrangements have been set out in a separate agreement with the Issuer, who will bear the sole responsibility for the payment thereof. Such agreement also sets out certain other matters in relation to the respective rights and responsibilities of the Issuer and us in connection with the services to be performed by us in connection with the issuance of the Comfort Letter.

### **Other Terms and Conditions**

30. In no circumstances shall we be liable, other than in the event of our fraud, bad faith or wilful default, for any loss or damage, of whatsoever nature, arising from information material to our work being withheld or concealed from us or misrepresented to us by the directors, employees, or agents of the Issuer or any other person of whom we may make inquiries unless, if in carrying out the procedures agreed under this arrangement letter, and solely as a result of information provided to us which we are required to consider or do consider, we conclude that there has been fraud, withholding, concealment or misrepresentation (or otherwise we conclude that any such information contains an inconsistency which clearly indicates that there may have been such a fraud, withholding, concealment or misrepresentation), and we fail to notify the Issuer and the Named Addressees of such conclusion.
31. In the course of providing the Services we, [Accountants] Hong Kong, may, at our discretion, draw on the resource of other entities (whether or not incorporated) which carry on business under a name which includes all or part of the [Accountants] name or is otherwise within (or associated or connected with an entity) or is a correspondent firm of the worldwide network of [Accountants] ("other [Accountants] Firms") and their partners and employees as we deem appropriate, but provision of the Services will remain our responsibility alone.
32. The Addressees agree that the Addressees will not bring any claim (whether in contract, tort (including negligence) or otherwise) against any other [Accountants] Firm or its personnel in respect of the Services. Any partner or employee of any other [Accountants] Firm who deals with the Addressees in connection with the Services does so solely on our behalf and we are liable for their activities as if they were in all respects our partners or staff.
33. The Addressees will not bring any claim (whether in contract, tort (including negligence) or otherwise) arising out of or in connection with the Services against any of our employees personally, but this will not limit or exclude any liability we may have for their acts or omissions.

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<sup>17</sup> In exceptional circumstances, it may also be appropriate to bring down the Comfort Letter to another date. Such arrangements should be discussed on a case-by-case basis.

34. The provisions of paragraphs 31 to 33 of this arrangement letter have been stipulated expressly for the benefit of our employees, and other [Accountants] Firms and their partners and employees (together "Beneficiaries"). The Addressees agree that, each of the Beneficiaries has the right to rely on paragraphs 31 to 34 of this arrangement letter as if they were parties to this arrangement letter. Each of the other [Accountants] Firms which agrees to assist in the provision of the Services does so in reliance on the protections afforded to it by paragraphs 31 to 34 of this arrangement letter, the benefit of which we formally accept on its behalf.

#### **Prohibition on Assignment**

35. No party may assign any of its rights in relation to this arrangement letter without the prior written consent of the others against whom the rights may be asserted, save that any Addressee and we may assign any of such rights, or such rights may pass by operation of law, to any successor to all or part of its business without such consent, provided that notice is given to the other signatories to this arrangement letter prior to any step being taken to enforce any rights hereunder.

#### **Third Party Rights**

36. Other than as set out in paragraph 34 above, this arrangement letter shall not create or give rise to, nor shall it be intended to create or give rise to, any third party rights and no third party shall have any right to enforce or rely on any provision of this arrangement letter. Save where otherwise stated in paragraph 34 above, the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the laws of Hong Kong) shall not under any circumstances apply to this arrangement letter. Any rights conferred on third parties by this arrangement letter exclude the right to assign, and their consent is not required to rescind or vary this arrangement letter. For the avoidance of doubt, this paragraph shall not apply to the Addressees or the successors referred to in paragraph 35 above.

#### **Termination**

37. Any party to this arrangement letter may at any time terminate this arrangement letter for whatever reason upon written notice to the other parties. In the case of termination by us, notice to the Issuer and the Named Addressees shall be sufficient notice.
38. Termination of this arrangement letter shall be without prejudice to any accrued rights of the parties to this arrangement letter. The provisions of this arrangement letter which expressly or by implication are intended to survive its termination or expiry will survive and continue to bind each party to this arrangement letter.

#### **Internet communication**

39. In connection with the Services the parties to this arrangement letter may from time to time communicate with each other electronically. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly each party to this arrangement letter accepts the limitations of electronic communication, and will use reasonable procedures to check for the then most commonly known viruses before sending information electronically.

#### **Miscellaneous**

40. Other than as set out in paragraph 29 above, this arrangement letter and the Appendix to it constitute the entire agreement for the provision of the Services between us to the exclusion of any other express or implied terms, whether expressed orally or in writing, including any conditions, warranties and representations and shall supersede all previous proposals, understandings, contracts, letters of engagement, undertakings, agreements and correspondence regarding the Services. Save as provided in this arrangement letter, no change in the terms of our arrangement with respect to the Services will be effective unless agreed in writing and signed by all parties to this arrangement letter.

41. This arrangement letter may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed and delivered at least one counterpart. Each counterpart shall constitute an original of this arrangement letter, but all the counterparts shall together constitute one and the same instrument.
42. If any term or terms of this arrangement letter shall be held to be invalid, illegal or unenforceable, such term or terms shall be deemed not to form part of this arrangement letter without prejudice to the enforceability of the remaining terms of this arrangement letter, provided always that if any such deletion substantially affects or alters the commercial basis of this arrangement letter, the parties to this arrangement letter will negotiate in good faith to amend and modify them as may be necessary or desirable in the circumstances.
43. Please acknowledge acceptance of the terms of our arrangement by signing and returning the enclosed copy of this arrangement letter.
44. If the Issuer or the Addressees have any questions regarding this arrangement letter please do not hesitate to contact us.

Yours faithfully,

ABC & Co.  
Certified Public Accountants (Practising) [or Certified Public Accountants]  
Hong Kong  
Date

#### **Acknowledgement and Acceptance**

We acknowledge receipt of this arrangement letter and agree with the terms of your arrangement set out therein:

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Director  
for and on behalf of  
the board of XYZ Limited

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Director  
for and on behalf of  
Lead Manager Limited/ [Named Addressee]  
(on its own behalf and as representative  
of each of the other International Underwriters)

**Example 3 – Public Offering in Hong Kong and an International Offering in reliance on Regulation S (combined approach)**

(letterhead of reporting accountants)

[Date]

To: The Directors, XYZ Limited

Sponsors Limited/Lead Manager Limited

[Other Named Addressees and each of the Hong Kong and international underwriters as defined in the respective Hong Kong and International Underwriting Agreements dated [•] (the "Hong Kong and International Underwriters") that is an Addressee (as defined in Paragraph 3 below)<sup>18</sup>

Dear Sirs,

**Comfort Letter and Other Assistance Relating to the Proposed Listing of XYZ Limited (the "Issuer") on the [Main Board/Growth Enterprise Market] of The Stock Exchange of Hong Kong Limited (the "Hong Kong Stock Exchange") and Relating to the Proposed Offering of the Ordinary Shares of the Issuer in reliance on Regulation S under the U.S. Securities Act of 1933, as amended ("the Securities Act")**

**Introduction**

1. This arrangement letter sets out the scope and limitations of the work to be performed by us, being the reporting accountants of the Issuer, in connection with the issuance of a comfort letter[(s)] and other assistance in respect of the above transaction, namely the proposed issue in Hong Kong (the "Hong Kong Public Offering") and outside of the United States of America in reliance on Regulation S under the Securities Act (the "Regulation S Offering") of [•] (collectively the "Issue") which will involve the preparation by the Issuer, and for which the Issuer will be solely responsible, in the case of the Hong Kong Public Offering, of a prospectus in accordance with the [Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the "Listing Rules")]/[Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited (the "GEM Rules")] and in the case of the Regulation S Offering, of an offering memorandum, that may be delivered to investors and utilised by them as a basis for their investment decisions (hereinafter each referred to in this letter as the "Offering Document"). This arrangement letter is written in the context of the respective roles of the directors of the Issuer, Sponsors Limited / Lead Manager Limited and the other Addressees (as defined below) and ourselves, in relation to the Issue. This arrangement letter does not apply to, and shall have no effect on, the rights and obligations of the Issuer, the Addressees or us in relation to any offering in the United States proposed to be conducted simultaneously with the Issue.

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<sup>18</sup> Named addressees of the arrangement letter and the comfort letter might include the sponsors, global coordinators, bookrunners, lead managers or other managing underwriters. These parties typically enter into the arrangement letter on behalf of the other underwriters of the Hong Kong public and Regulation S offerings. It should not be necessary to name such other underwriters in the arrangement letter, since the offering document and the Hong Kong and international underwriting agreements will clearly identify them. In certain circumstances, it may be appropriate to address a comfort letter to other parties, in which case such parties would also be appropriate parties to the arrangement letter. Typically, the sponsors and the lead and/or managing underwriters (however named in the underwriting agreements), would be the named addressees of the comfort letter.



2. The services we will provide in connection with the Issue (the "Services") will comprise:
- provision of a comfort letter and where applicable, additional or updated comfort letter(s) [for each of the Hong Kong Public Offering and the Regulation S Offering] (addressed to the directors of the Issuer and the Addressees) in connection with the Offering Document (the "Comfort Letter"), and
  - having meetings and discussions with the Addressees and their professional advisers and responding orally or otherwise to questions raised by them in connection with their due diligence regarding the Issue and the Offering Document (the "Other Assistance").

### Addressees

3. This arrangement letter is addressed to [the Sponsor(s), the Global Coordinator(s) and the Lead Manager(s)] (the "Named Addressees"), and to each of the Hong Kong and the International Underwriters (as defined in the Offering Document) which has agreed (or after the date of this arrangement letter agrees) to participate in the Issue and which has, or prior to the issue of the Comfort Letter will have agreed to be bound by the terms of this arrangement letter, either by having validly authorised one or more of the signatories of this arrangement letter to enter into this arrangement letter on its behalf or validly ratified the entry into this arrangement letter on its behalf. The addressees of this arrangement letter (other than the Issuer) are collectively referred to herein as the "Addressees". By signing and accepting the terms of this arrangement letter, each Named Addressee confirms that it will use reasonable endeavours to obtain prima facie authority from each of the Hong Kong and the International Underwriters authorising it to enter into this arrangement letter as representative of the relevant underwriter. However, no Named Addressee makes any representation as to whether such prima facie authority actually confers the necessary authority.

### Comfort Letter

4. The Comfort Letter and the Other Assistance will be provided to the Issuer for its information only, and to the Addressees solely in the context of the due diligence procedures being undertaken or procured to be undertaken by the Addressees in connection with the offering or sale of the securities in Hong Kong and outside of the United States under Regulation S pursuant to the Offering Document, for the purpose of establishing or seeking to establish any defence in such context ("Due Diligence Defence") that the Addressees may wish to advance in any actual or potential court or arbitration proceedings, any investigation, hearing or other proceedings by any regulatory body, or any claim or dispute in respect of the Offering Document or otherwise in connection with the Issue. Accordingly, the Comfort Letter will be addressed to the Addressees for that purpose and neither the Comfort Letter nor the Other Assistance may be relied on by the Addressees for any other purpose. The Addressees are requesting the Comfort Letter in connection with the Issue as one of a number of procedures that the Addressees may use to establish the investigation that they have conducted.
5. Each Named Addressee confirms that it is aware of the due diligence guidance included in the [Listing Rules][GEM Rules] [and in respect of the International Offering the due diligence guidance issued by [*name of framework/organization, e.g., the International Capital Market Association*]], which will be followed.
6. For the avoidance of doubt and subject to the limitations or exclusions which are contained in or referred to in Paragraphs 7, 8, 24 and 30 of this arrangement letter, nothing in this arrangement letter shall preclude any Addressee from obtaining compensation from us in respect of any liability that it may incur to an investor arising out of the Issue or the contents of the Offering Document to the extent that such liability arises because the work undertaken pursuant to this arrangement letter or the Comfort Letter was undertaken negligently, in bad faith or as a result of our fraud or wilful default, it being understood that the foregoing is without prejudice to any defence of contributory negligence that may be available to us.

7. The Comfort Letter issued pursuant to this arrangement letter will be provided in accordance with the standards of the Hong Kong Institute of Certified Public Accountants (the "HKICPA") and will not have been provided in accordance with any other professional standards, including but not limited to those of the American Institute of Certified Public Accountants.
8. Our work and findings shall not in any way constitute advice or recommendations (and we accept no liability in relation to any advice or recommendations) regarding any commercial decisions associated with the Issue, including, in particular, but without limitation, any which may be taken by any Addressee (or any person connected to any Addressee) in the capacity of investor or in providing investment advice to their clients.
9. The Comfort Letter will be provided solely for the Addressees' private information and should not be used for any purpose other than as set out in Paragraph 4. The Comfort Letter may not be referred to in any other document (except that references may be made to its existence in (i) contracts among any of the Issuer, the Addressees and ourselves and (ii) any communications in relation to the Issue among any of the Issuer, the Addressees and ourselves), nor made available to any other party (except that copies may be included in bibles of transaction documents memorialising the Issue).
10. Nothing in Paragraphs 4, 7 or 9 shall prevent the Addressees from disclosing this arrangement letter and the Comfort Letter to the Addressees' professional advisers or as may be required by law, regulation or court order or the rules or requirements of a regulatory body or stock exchange whose requirements the Addressees are complying with, and/or referring to and/or producing the Comfort Letter for any of the purposes set out in Paragraph 4. Except as permitted in the immediately preceding sentence, the Addressees shall first obtain our prior written consent for disclosure of the Comfort Letter to third parties.
11. Other than to those who have, or before the Comfort Letter is issued shall have, validly accepted this arrangement letter, we will not accept any responsibility to any party to whom the Comfort Letter is shown or into whose hands it may come.

### Work and Procedures

12. Our work will be conducted in accordance with Hong Kong Standard on Investment Circular Reporting Engagements 400 (Revised), *Comfort Letters and Due Diligence Meetings* issued by the HKICPA. Specifically, our work will enable us to report factual findings in relation to selected financial information and to enable us to provide limited assurance on subsequent changes to historical financial information included in the Offering Document. [Procedures undertaken in connection with providing limited assurance on interim financial information will be conducted with reference to Hong Kong Standard on Review Engagements ("HKSRE") 2410.<sup>19</sup>] In other jurisdictions, standards and practices relevant to reporting accountants may be different and may not provide for reporting in the manner contemplated herein. Accordingly, the Comfort Letter should not be relied on as if it had been provided in accordance with the standards and practice of any professional body in any other jurisdiction.
13. Except as specifically stated in our comfort letter we have not performed an audit or review in respect of any financial information relating to the Issuer for any period subsequent to [date of last reported balance sheet] in accordance with Hong Kong Standards on Auditing ("HKSA") or [Hong Kong Standards on Review Engagements ("HKSREs")][HKSREs] issued by the HKICPA. The procedures we will use to perform the work set out in this arrangement letter including those in relation to subsequent changes will not constitute an audit or review made in accordance with HKSA or HKSREs issued by the HKICPA. Furthermore, they will not necessarily reveal matters of significance with respect to any material misstatement of the information referred to below.

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<sup>19</sup> In certain situations the reporting accountant may be required to perform a review of interim financial information in order to enable negative assurance to be provided on subsequent changes. This sentence should be included where such a review will be undertaken.

14. We will only carry out those procedures expressly provided for in the Comfort Letter. Accordingly, we make no representations as to the sufficiency for the Addressees' purposes of the procedures provided for in the Comfort Letter and, therefore, our responsibility shall be limited to performing the work agreed upon in this arrangement letter and/or recorded in the Comfort Letter with due skill, care and attention. If we were to perform additional procedures or if we were to conduct an audit or review on the financial information of the Issuer in accordance with HKSA's or HKSREs issued by the HKICPA, other matters might be reported to the Addressees in the Comfort Letter. The procedures to be performed by us in connection with the Comfort Letter should not be taken to supplant additional inquiries or procedures that may be appropriate in the performance of the Addressees' role under the proposed Issue.
15. In relation to the contents of the Offering Document, we will address ourselves solely to such financial and other information in the Offering Document as is identified in the Comfort Letter and we will make no representations as to the adequacy of disclosure in the Offering Document or as to whether any material facts have been omitted by the Issuer. Further, we make no representations regarding any questions of legal interpretation.
16. The procedures that we plan to conduct have been determined by the Named Addressees and agreed by the parties to this arrangement letter, and will be recorded in the Comfort Letter. In carrying out our work pursuant to this arrangement letter, we will rely on the accuracy and completeness of certain information and explanations provided to us during the course of our work and will further request the directors of the Issuer to provide us with written representations concerning the accuracy and completeness of certain information and explanations provided to us for the purpose of our work. The Addressees will therefore understand that the procedures to be carried out by us are not designed to, and are not likely to, reveal fraud, withholding, concealment or misrepresentation by the management of the Issuer or its subsidiaries (the Issuer and its subsidiaries are collectively referred to herein as "the Group"). Notwithstanding the preceding three sentences, if in carrying out the procedures agreed under this arrangement letter, and solely as a result of information provided to us which we are required to consider or do consider, we conclude that there has been fraud, withholding, concealment or misrepresentation (or otherwise we conclude that any such information contains an inconsistency which clearly indicates that there may have been such a fraud, withholding, concealment or misrepresentation), we will (and are hereby authorised by the Issuer to), as soon as practicable, notify the Issuer and the Named Addressees of this and discuss with them whether further procedures can be designed to seek to resolve the matter. Where such procedures are agreed between us, we will carry them out and amend the Comfort Letter accordingly.
17. Any opinions expressed on financial information outside the context of this arrangement letter were or are expressed solely in the context of the specific terms and conditions governing their preparation. In particular, the terms of this arrangement letter and any action pursuant to it shall be additional to and shall not detract from or change in any way any legal rights which any party to this arrangement letter may otherwise have acquired, whether in contract or in tort, in connection with our reporting on the historical financial information of the Issuer.
18. Save as may be expressly recorded in the Comfort Letter, we do not accept any responsibility for any other reports or letters beyond any responsibility that we owed to those to whom our reports or letters were addressed at the date of their issue.

### **Contents of the Comfort Letter**

19. We will prepare and expect to issue the Comfort Letter addressed to the Issuer and the Addressees on the basis described above. Based upon our present understanding of the Addressees' requirements, we expect to be able to provide the Addressees with the Comfort Letter substantially in the form contained in the Appendix to this arrangement letter, setting out the procedures that we expect to carry out prior to issuing the Comfort Letter.<sup>20</sup> Execution of this arrangement letter by the Named Addressees will constitute the Addressees' agreement to the scope and extent of such procedures.

---

<sup>20</sup> Where a draft comfort letter is not appended, briefly explain the procedures to be performed.

20. We would be grateful if the Named Addressees would review the draft comfort letter that we expect to be able to provide the Addressees with and let us have any amendments the Named Addressees propose to the procedures as soon as possible, so that we can provide the Named Addressees with a revised draft for further consideration and approval.
21. Once an advanced draft of the Offering Document is available and the Named Addressees have identified, and we have agreed, the detailed financial information whose extraction or calculation the Named Addressees require to be covered in the Comfort Letter, we will provide the Named Addressees with a further revised draft of the Comfort Letter for approval of its scope prior to finalisation.
22. For the avoidance of doubt, we will not comment on, or otherwise give comfort in relation to, the Issuer's prospects or trading position or, save as expressly stated in the Comfort Letter, comment on or provide any opinion or other conclusion as to the current overall financial position of the Issuer.<sup>21</sup>

### Drafts

23. During the course of the arrangement we may show drafts of, or report orally on, the Comfort Letter to the Named Addressees. In so far as any such draft or oral report is inconsistent with the subsequent final Comfort Letter, it will be deemed to be superseded by such final Comfort Letter.

### Meetings

24. It will be necessary for us to receive copies of the draft Offering Document as it is produced and it may be necessary for us to attend meetings (including, but not limited to, meetings with the Issuer and its directors and/or employees and the Addressees and their employees, advisers or agents) at which the Offering Document(s) is discussed and drafted or at which other related matters are discussed. We shall answer queries raised at such meetings on an informal basis but the Addressees should neither act nor refrain from acting on the basis of such informal answers unless and until they are confirmed in writing by us, whether in the final Comfort Letter(s) or otherwise. In the absence of such written confirmation we shall have no liability to the Addressees in contract or in tort (including negligence) for our answers other than for an oral statement known to be false or misleading when made and made with intent to deceive.<sup>22</sup> Subject to the above, nothing in this paragraph shall prejudice the Addressees' ability to rely on a non-recourse basis (meaning without any liability on our part except for oral statements known to be false or misleading when made and made with intent to deceive) on any comments we may provide orally, either in the context of establishing or seeking to establish any Due Diligence Defence in connection with any court, arbitral, regulatory or administrative proceedings or otherwise for the purposes of resolving either actual or potential proceedings, investigations, claims or disputes in respect of the Offering Document or otherwise in connection with the Issue.
25. Unless otherwise specifically agreed between the Issuer, the Named Addressees and us, we are authorised by the Issuer to speak to the Addressees and other professional advisers advising on the proposed Issue. In connection with our work pursuant to this arrangement letter, we may release to the Addressees and such other professional advisers any information relating to the Issuer or the Issue, whether confidential or not, and whether obtained during the course of our work or otherwise, and shall not be liable to the Issuer for any use subsequently made of that information. Our partners and staff working on this arrangement shall not be required, expected or deemed to have knowledge of any information known to other partners or staff of our firm but which is not known to those on this arrangement. In addition we shall not be required to make use of or disclose to the Addressees any information which is confidential to another client of our firm.

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<sup>21</sup> If specific procedures and appropriate terms (e.g. as to timing) are agreed between all parties, the reporting accountants may undertake additional work in accordance with HKSIR 400 (Revised).

<sup>22</sup> If specific matters are discussed which the Addressees wish to be able to rely upon in accordance with this arrangement letter, the Issuer and the Named Addressees should arrange for them to be confirmed in writing by reporting accountants. If the reporting accountants are willing to confirm such matters in writing, further work and an extension of the terms of the arrangement are likely to be required.

**Timetable**

26. Our work will depend upon receiving without undue delay full co-operation from all relevant officials of the Issuer and the Group and their disclosure to us of all accounting records of the Group and all other records and related information (including certain representations) we may need for the purposes of our work. We will endeavour to carry out our work in accordance with a timetable to be agreed between all parties that will satisfy the requirements of the Issue. We intend to provide the Issuer and the Addressees with (1) Comfort Letters dated the date of the Offering Documents relating to the Issues, (2) additional or updating Comfort Letters on and dated the date of the closing of the Issues (to be delivered at closing of each Issue) and (3) where appropriate, an additional or updating Comfort Letter on and dated the over-allotment option closing date of the Regulation S Offering.<sup>23</sup> In connection with the delivery of any new or updating Comfort Letter, we will bring down our work to an agreed cut-off date. We will discuss with the Named Addressees any difficulties we encounter with this arrangement or with meeting the timetable as soon as any problems arise.

**Applicable Law and Jurisdiction**

27. This arrangement letter shall be governed by, and construed in accordance with, Hong Kong law. The Courts of Hong Kong shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this arrangement letter, the Comfort Letter or any matter arising from them.

**Staffing**

28. [Name] will be the partner in charge of the services we will provide. [Name] will act as manager, with the help of [name], calling upon specialist staff as appropriate. We shall use reasonable endeavours to ensure that they are so involved but we may substitute those identified with others of equal or similar skills.

**Fees and Certain Other Matters**

29. Details of our fees and proposed billing arrangements have been set out in a separate agreement with the Issuer, who will bear the sole responsibility for the payment thereof. Such agreement also sets out certain other matters in relation to the respective rights and responsibilities of the Issuer and us in connection with the services to be performed by us in connection with the issuance of the Comfort Letter.

**Other Terms and Conditions**

30. In no circumstances shall we be liable, other than in the event of our fraud, bad faith or wilful default, for any loss or damage, of whatsoever nature, arising from information material to our work being withheld or concealed from us or misrepresented to us by the directors, employees, or agents of the Issuer or any other person of whom we may make inquiries unless, if in carrying out the procedures agreed under this arrangement letter, and solely as a result of information provided to us which we are required to consider or do consider, we conclude that there has been fraud, withholding, concealment or misrepresentation (or otherwise we conclude that any such information contains an inconsistency which clearly indicates that there may have been such a fraud, withholding, concealment or misrepresentation), and we fail to notify the Issuer and the Named Addressees of such conclusion.
31. In the course of providing the Services we, [Accountants] Hong Kong, may, at our discretion, draw on the resource of other entities (whether or not incorporated) which carry on business under a name which includes all or part of the [Accountants] name or is otherwise within (or associated or connected with an entity) or is a correspondent firm of the worldwide network of [Accountants] ("other [Accountants] Firms") and their partners and employees as we deem appropriate, but provision of the Services will remain our responsibility alone.

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<sup>23</sup> In exceptional circumstances, it may also be appropriate to bring down the Comfort Letter to another date. Such arrangements should be discussed on a case-by-case basis.

32. The Addressees agree that the Addressees will not bring any claim (whether in contract, tort (including negligence) or otherwise) against any other [Accountants] Firm or its personnel in respect of the Services. Any partner or employee of any other [Accountants] Firm who deals with the Addressees in connection with the Services does so solely on our behalf and we are liable for their activities as if they were in all respects our partners or staff.
33. The Addressees will not bring any claim (whether in contract, tort (including negligence) or otherwise) arising out of or in connection with the Services against any of our employees personally, but this will not limit or exclude any liability we may have for their acts or omissions.
34. The provisions of paragraphs 31 to 33 of this arrangement letter have been stipulated expressly for the benefit of our employees, and other [Accountants] Firms and their partners and employees (together "Beneficiaries"). The Addressees agree that, each of the Beneficiaries has the right to rely on paragraphs 31 to 34 of this arrangement letter as if they were parties to this arrangement letter. Each of the other [Accountants] Firms which agrees to assist in the provision of the Services does so in reliance on the protections afforded to it by paragraphs 31 to 34 of this arrangement letter, the benefit of which we formally accept on its behalf.

#### **Prohibition on Assignment**

35. No party may assign any of its rights in relation to this arrangement letter without the prior written consent of the others against whom the rights may be asserted, save that any Addressee and we may assign any of such rights, or such rights may pass by operation of law, to any successor to all or part of its business without such consent, provided that notice is given to the other signatories to this arrangement letter prior to any step being taken to enforce any rights hereunder.

#### **Third Party Rights**

36. Other than as set out in paragraph 34 above, this arrangement letter shall not create or give rise to, nor shall it be intended to create or give rise to, any third party rights and no third party shall have any right to enforce or rely on any provision of this arrangement letter. Save where otherwise stated in paragraph 34 above, the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the laws of Hong Kong) shall not under any circumstances apply to this arrangement letter. Any rights conferred on third parties by this arrangement letter exclude the right to assign, and their consent is not required to rescind or vary this arrangement letter. For the avoidance of doubt, this paragraph shall not apply to the Addressees or the successors referred to in paragraph 35 above.

#### **Termination**

37. Any party to this arrangement letter may at any time terminate this arrangement letter for whatever reason upon written notice to the other parties. In the case of termination by us, notice to the Issuer and the Named Addressees shall be sufficient notice.
38. Termination of this arrangement letter shall be without prejudice to any accrued rights of the parties to this arrangement letter. The provisions of this arrangement letter which expressly or by implication are intended to survive its termination or expiry will survive and continue to bind each party to this arrangement letter.

#### **Internet communication**

39. In connection with the Services the parties to this arrangement letter may from time to time communicate with each other electronically. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly each party to this arrangement letter accepts the limitations of electronic communication, and will use reasonable procedures to check for the then most commonly known viruses before sending information electronically.

**Miscellaneous**

40. Other than as set out in paragraph 29 above, this arrangement letter and the Appendix to it constitute the entire agreement for the provision of the Services between us to the exclusion of any other express or implied terms, whether expressed orally or in writing, including any conditions, warranties and representations and shall supersede all previous proposals, understandings, contracts, letters of engagement, undertakings, agreements and correspondence regarding the Services. Save as provided in this arrangement letter, no change in the terms of our arrangement with respect to the Services will be effective unless agreed in writing and signed by all parties to this arrangement letter.
41. This arrangement letter may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed and delivered at least one counterpart. Each counterpart shall constitute an original of this arrangement letter, but all the counterparts shall together constitute one and the same instrument.
42. If any term or terms of this arrangement letter shall be held to be invalid, illegal or unenforceable, such term or terms shall be deemed not to form part of this arrangement letter without prejudice to the enforceability of the remaining terms of this arrangement letter, provided always that if any such deletion substantially affects or alters the commercial basis of this arrangement letter, the parties to this arrangement letter will negotiate in good faith to amend and modify them as may be necessary or desirable in the circumstances.
43. Please acknowledge acceptance of the terms of our arrangement by signing and returning the enclosed copy of this arrangement letter.
44. If the Issuer or the Addressees have any questions regarding this arrangement letter please do not hesitate to contact us.

Yours faithfully,

ABC & Co.  
Certified Public Accountants (Practising) [or Certified Public Accountants]  
Hong Kong  
Date

**Acknowledgement and Acceptance**

We acknowledge receipt of this arrangement letter and agree with the terms of your arrangement set out therein:

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Director  
for and on behalf of  
the board of XYZ Limited

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Director  
for and on behalf of  
Sponsors Limited/Lead Manager Limited  
[Named Addressee]  
(on its own behalf and as representative of  
each of the Hong Kong and other International  
Underwriters)

**Example 4 – Debt Offering in reliance on Regulation S**

(letterhead of Independent accountants)

[Date]

To: The Directors, XYZ Limited [and ABC Limited]

Lead Manager Limited

[Other Named Addressees and each of the other joint lead managers and managers as defined in the Subscription Agreement dated [•] (the "Managers") that is an Addressee (as defined in Paragraph 3 below)<sup>24</sup>

Dear Sirs,

**Comfort Letter and Other Assistance Relating to the Proposed Offering of [x] (the "Notes") of XYZ Limited (the "Company") [guaranteed by ABC Limited (the "Guarantor")] in reliance on Regulation S under the U.S. Securities Act of 1933, as amended (the "Securities Act")**

**Introduction**

1. This arrangement letter sets out the scope and limitations of the work to be performed by us, in connection with the issuance of a comfort letter and other assistance in respect of the above transaction, namely the proposed international offering outside of the United States of America in reliance on Regulation S under the Securities Act (the "Regulation S Offering") of the Notes (the "Issue") which will involve the preparation by the Company, and for which the Company will be solely responsible, of an offering circular, [in accordance with the Listing Rules of [relevant] Stock Exchange or other Listing Authority] (the "Offering Circular"). This arrangement letter is written in the context of the respective roles of the directors of the Company,[ the directors of the Guarantor,] Lead Manager Limited (the "Lead Manager") and the other Addressees (as defined below) and ourselves, in relation to the Issue. This arrangement letter does not apply to, and shall have no effect on, the rights and obligations of the Company, [the Guarantor,] the Addressees or us in relation to any offering in the United States not otherwise pursuant to the Regulation S Offering.
2. The services we will provide in connection with the Issue (the "Services") will comprise:
  - provision of a comfort letter and where applicable, additional or updated comfort letter(s) (addressed to the directors of the Company,[ the directors of the Guarantor] and the Addressees) in connection with the Offering Circular (the "Comfort Letter"), and
  - having meetings and discussions with the Addressees and their professional advisers and responding orally or otherwise to questions raised by them in connection with their due diligence regarding the Issue and the Offering Circular (the "Other Assistance").

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<sup>24</sup> Named addressees of the arrangement letter and the comfort letter might include the global coordinators, bookrunners, lead managers or other underwriters. These parties typically enter into the arrangement letter on behalf of the other underwriters of the Regulation S offering. It should not be necessary to name such other underwriters in the arrangement letter, since the offering circular and the subscription agreement will clearly identify them. In certain circumstances, it may be appropriate to address a comfort letter to other parties, in which case such parties would also be appropriate parties to the arrangement letter. Typically, the lead and/or other underwriters (however named in the subscription agreement), would be the named addressees of the comfort letter.



### Addressees

3. This arrangement letter is addressed to [the Global Coordinator(s) and the Lead Manager(s)] (the "Named Addressees"), and to each of the other Managers (as defined in the Offering Circular) which has agreed (or after the date of this arrangement letter agrees) to participate in the Issue and which has, or prior to the issue of the Comfort Letter will have agreed to be bound by the terms of this arrangement letter, either by having validly authorised one or more of the signatories of this arrangement letter to enter into this arrangement letter on its behalf or validly ratified the entry into this arrangement letter on its behalf. The addressees of this arrangement letter (other than the Company [and the Guarantor]) are collectively referred to herein as the "Addressees". By signing and accepting the terms of this arrangement letter, each Named Addressee confirms that it will use reasonable endeavours to obtain prima facie authority from each of the other Managers authorising it to enter into this arrangement letter as representative of the relevant Manager. However, no Named Addressee makes any representation as to whether such prima facie authority actually confers the necessary authority.

### Comfort Letter

4. The Comfort Letter and the Other Assistance will be provided to the Company [and the Guarantor] for [its/their] information only, and to the Addressees solely in the context of the due diligence procedures being undertaken or procured to be undertaken by the Addressees in connection with the offering or sale of the securities outside of the United States under Regulation S pursuant to the Offering Circular, for the purpose of establishing or seeking to establish any defence in such context ("Due Diligence Defence") that the Addressees may wish to advance in any actual or potential court or arbitration proceedings, any investigation, hearing or other proceedings by any regulatory body, or any claim or dispute in respect of the Offering Circular or otherwise in connection with the Issue. Accordingly, the Comfort Letter will be addressed to the Addressees for that purpose and neither the Comfort Letter nor the Other Assistance may be relied on by the Addressees for any other purpose. The Addressees are requesting the Comfort Letter in connection with the Issue as one of a number of procedures that the Addressees may use to establish the investigation that they have conducted.
5. Each Named Addressee confirms that it is aware of the guidance related to due diligence issued by the International Capital Market Association, which will be followed.
6. For the avoidance of doubt and subject to the limitations or exclusions which are contained in or referred to in Paragraphs 7, 8, 24 and 30 of this arrangement letter, nothing in this arrangement letter shall preclude any Addressee from obtaining compensation from us in respect of any liability that it may incur to an investor arising out of the Issue or the contents of the Offering Circular to the extent that such liability arises because the work undertaken pursuant to this arrangement letter or the Comfort Letter was undertaken negligently, in bad faith or as a result of our fraud or wilful default, it being understood that the foregoing is without prejudice to any defence of contributory negligence that may be available to us.
7. The Comfort Letter issued pursuant to this arrangement letter will be provided in accordance with the standards of the Hong Kong Institute of Certified Public Accountants (the "HKICPA") and will not have been provided in accordance with any other professional standards, including but not limited to those of the American Institute of Certified Public Accountants.
8. Our work and findings shall not in any way constitute advice or recommendations (and we accept no liability in relation to any advice or recommendations) regarding any commercial decisions associated with the Issue, including, in particular, but without limitation, any which may be taken by any Addressee (or any person connected to any Addressee) in the capacity of investor or in providing investment advice to their clients.
9. The Comfort Letter will be provided solely for the Addressees' private information and should not be used for any purpose other than as set out in Paragraph 4. The Comfort Letter may not be referred to in any other document (except that references may be made to its existence in (i) contracts among any of the Company [and the Guarantor], the Addressees and ourselves and (ii) any communications in relation to the Issue among any of the Company[, the Guarantor], the Addressees, the Managers and ourselves), nor made available to any other party (except that

copies may be included in bibles of transaction documents memorialising the Issue).

10. Nothing in Paragraphs 4, 7 or 9 shall prevent the Addressees from disclosing this arrangement letter and the Comfort Letter to the Addressees' professional advisers or as may be required by law, regulation or court order or the rules or requirements of a regulatory body or stock exchange whose requirements the Addressees are complying with, and/or referring to and/or producing the Comfort Letter for any of the purposes set out in Paragraph 4. Except as permitted in the immediately preceding sentence, the Addressees shall first obtain our prior written consent for disclosure of the Comfort Letter to third parties.
11. Other than to those who have, or before the Comfort Letter is issued shall have, validly accepted this arrangement letter, we will not accept any responsibility to any party to whom the Comfort Letter is shown or into whose hands it may come.

### Work and Procedures

12. Our work will be conducted in accordance with Hong Kong Standard on Investment Circular Reporting Engagements 400 (Revised), *Comfort Letters and Due Diligence Meetings* issued by the HKICPA. Specifically, our work will enable us to report factual findings in relation to selected financial information and to enable us to provide limited assurance on subsequent changes to historical financial information included in the Offering Circular. [Procedures undertaken in connection with providing limited assurance on interim financial statements will be conducted with reference to Hong Kong Standard on Review Engagements ("HKSRE") 2410.<sup>25</sup>] In other jurisdictions, standards and practices relevant to our work may be different and may not provide for reporting in the manner contemplated herein. Accordingly, the Comfort Letter should not be relied on as if it had been provided in accordance with the standards and practice of any professional body in any other jurisdiction.
13. Except as specifically stated in our comfort letter we have not performed an audit or review in respect of any financial statements relating to the [Company/Guarantor] for any period subsequent to [date of last reported balance sheet] in accordance with Hong Kong Standards on Auditing ("HKSA") or [Hong Kong Standards on Review Engagements ("HKSREs")][HKSREs] issued by the HKICPA. The procedures we will use to perform the work set out in this arrangement letter including those in relation to subsequent changes will not constitute an audit or review made in accordance with HKSA or HKSREs issued by the HKICPA. Furthermore, they will not necessarily reveal matters of significance with respect to any material misstatement of the information referred to below.
14. We will only carry out those procedures expressly provided for in the Comfort Letter. Accordingly, we make no representations as to the sufficiency for the Addressees' purposes of the procedures provided for in the Comfort Letter and, therefore, our responsibility shall be limited to performing the work agreed upon in this arrangement letter and/or recorded in the Comfort Letter with due skill, care and attention. If we were to perform additional procedures or if we were to conduct an audit or review on the financial statements of the [Company/Guarantor] in accordance with HKSA or HKSREs issued by the HKICPA, other matters might be reported to the Addressees in the Comfort Letter. The procedures to be performed by us in connection with the Comfort Letter should not be taken to supplant additional inquiries or procedures that may be appropriate in the performance of the Addressees' role under the proposed Issue.
15. In relation to the contents of the Offering Circular, we will address ourselves solely to such financial and other information in the Offering Circular as is identified in the Comfort Letter and we will make no representations as to the adequacy of disclosure in the Offering Circular or as to whether any material facts have been omitted by the Company. Further, we make no representations regarding any questions of legal interpretation.
16. The procedures that we plan to conduct have been determined by the Named Addressees and agreed by the parties to this arrangement letter, and will be recorded in the Comfort Letter. In carrying out our work pursuant to this arrangement letter, we will rely

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<sup>25</sup> In certain situations independent accountants may be required to perform a review of interim financial statements in order to enable negative assurance to be provided on subsequent changes. This sentence should be included where such a review will be undertaken.

on the accuracy and completeness of certain information and explanations provided to us during the course of our work and will further request the directors of the [Company/Guarantor] to provide us with written representations concerning the accuracy and completeness of certain information and explanations provided to us for the purpose of our work. The Addressees will therefore understand that the procedures to be carried out by us are not designed to, and are not likely to, reveal fraud, withholding, concealment or misrepresentation by the management of the [Company or its subsidiaries (the Company and its subsidiaries are collectively referred to herein as "the Group")] [Company, the Guarantor or its subsidiaries (the Guarantor and its subsidiaries are collectively referred to herein as "the Group")]. Notwithstanding the preceding three sentences, if in carrying out the procedures agreed under this arrangement letter, and solely as a result of information provided to us which we are required to consider or do consider, we conclude that there has been fraud, withholding, concealment or misrepresentation (or otherwise we conclude that any such information contains an inconsistency which clearly indicates that there may have been such a fraud, withholding, concealment or misrepresentation), we will (and are hereby authorised by the Company [and the Guarantor] to), as soon as practicable, notify the Company[, the Guarantor] and the Named Addressees of this and discuss with them whether further procedures can be designed to seek to resolve the matter. Where such procedures are agreed between us, we will carry them out and amend the Comfort Letter accordingly.

17. Any opinions expressed on financial information outside the context of this arrangement letter were or are expressed solely in the context of the specific terms and conditions governing their preparation. In particular, the terms of this arrangement letter and any action pursuant to it shall be additional to and shall not detract from or change in any way any legal rights which any party to this arrangement letter may otherwise have acquired, whether in contract or in tort, in connection with our reporting on the historical financial information of the [Company/Guarantor].
18. Save as may be expressly recorded in the Comfort Letter, we do not accept any responsibility for any other reports or letters beyond any responsibility that we owed to those to whom our reports or letters were addressed at the date of their issue.

#### **Contents of the Comfort Letter**

19. We will prepare and expect to issue the Comfort Letter addressed to the Company [, the Guarantor] and the Addressees on the basis described above. Based upon our present understanding of the Addressees' requirements, we expect to be able to provide the Addressees with the Comfort Letter substantially in the form contained in the Appendix to this arrangement letter, setting out the procedures that we expect to carry out prior to issuing the Comfort Letter.<sup>26</sup> Execution of this arrangement letter by the Named Addressees will constitute the Addressees' agreement to the scope and extent of such procedures.
20. We would be grateful if the Named Addressees would review the draft comfort letter that we expect to be able to provide the Addressees with and let us have any amendments the Named Addressees propose to the procedures as soon as possible, so that we can provide the Named Addressees with a revised draft for further consideration and approval.
21. Once an advanced draft of the Offering Circular is available and the Named Addressees have identified, and we have agreed, the detailed financial information whose extraction or calculation the Named Addressees require to be covered in the Comfort Letter, we will provide the Named Addressees with a further revised draft of the Comfort Letter for approval of its scope prior to finalisation.

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<sup>26</sup> Where a draft comfort letter is not appended, briefly explain the procedures to be performed.

22. For the avoidance of doubt, we will not comment on, or otherwise give comfort in relation to, the [Company's/Guarantor's] prospects or trading position or, save as expressly stated in the Comfort Letter, comment on or provide any opinion or other conclusion as to the current overall financial position of the [Company/Guarantor].<sup>27</sup>

### Drafts

23. During the course of the arrangement we may show drafts of, or report orally on, the Comfort Letter to the Named Addressees. In so far as any such draft or oral report is inconsistent with the subsequent final Comfort Letter, it will be deemed to be superseded by such final Comfort Letter.

### Meetings

24. It will be necessary for us to receive copies of the draft Offering Circular as it is produced and it may be necessary for us to attend meetings (including, but not limited to, meetings with the Company[, the Guarantor] and [its/their] directors and/or employees and the Addressees and their employees, advisers or agents) at which the Offering Circular is discussed and drafted or at which other related matters are discussed. We shall answer queries raised at such meetings on an informal basis but the Addressees should neither act nor refrain from acting on the basis of such informal answers unless and until they are confirmed in writing by us, whether in the final Comfort Letter or otherwise. In the absence of such written confirmation we shall have no liability to the Addressees in contract or in tort (including negligence) for our answers other than for an oral statement known to be false or misleading when made and made with intent to deceive.<sup>28</sup> Subject to the above, nothing in this paragraph shall prejudice the Addressees' ability to rely on a non-recourse basis (meaning without any liability on our part except for oral statements known to be false or misleading when made and made with intent to deceive) on any comments we may provide orally, either in the context of establishing or seeking to establish any Due Diligence Defence in connection with any court, arbitral, regulatory or administrative proceedings or otherwise for the purposes of resolving either actual or potential proceedings, investigations, claims or disputes in respect of the Offering Circular or otherwise in connection with the Issue.
25. Unless otherwise specifically agreed between the Company[, the Guarantor], the Named Addressees and us, we are authorised by the Company [and the Guarantor] to speak to the Addressees and other professional advisers advising on the proposed Issue. In connection with our work pursuant to this arrangement letter, we may release to the Addressees and such other professional advisers any information relating to the Company [and the Guarantor] or the Issue, whether confidential or not, and whether obtained during the course of our work or otherwise, and shall not be liable to the Company [or the Guarantor] for any use subsequently made of that information. Our partners and staff working on this arrangement shall not be required, expected or deemed to have knowledge of any information known to other partners or staff of our firm but which is not known to those on this arrangement. In addition we shall not be required to make use of or disclose to the Addressees any information which is confidential to another client of our firm.

### Timetable

26. Our work will depend upon receiving without undue delay full co-operation from all relevant officials of the Company[, the Guarantor] and the Group and their disclosure to us of all accounting records of the Group and all other records and related information (including certain representations) we may need for the purposes of our work. We will endeavour to carry out our work in accordance with a timetable to be agreed between all parties that will satisfy the requirements of the Issue. We intend to provide the Company[, the Guarantor] and the Addressees with (1) the Comfort Letter dated the date of the Offering Circular relating to the Issue, (2) an additional or updating Comfort Letter on and dated the date of the closing of the

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<sup>27</sup> If specific procedures and appropriate terms (e.g. as to timing) are agreed between all parties, the independent accountants may undertake additional work in accordance with HKSIR 400 (Revised).

<sup>28</sup> If specific matters are discussed which the Addressees wish to be able to rely upon in accordance with this arrangement letter, the Issuer and the Named Addressees should arrange for them to be confirmed in writing by the independent accountants. If the independent accountants are willing to confirm such matters in writing, further work and an extension of the terms of the arrangement are likely to be required.

Issue (to be delivered at closing of the Issue) and (3) where appropriate, an additional or updating Comfort Letter on and dated the over-allotment option closing date.<sup>29</sup> In connection with the delivery of any new or updating Comfort Letter, we will bring down our work to an agreed cut-off date. We will discuss with the Named Addressees any difficulties we encounter with this arrangement or with meeting the timetable as soon as any problems arise.

### **Applicable Law and Jurisdiction**

27. This arrangement letter shall be governed by, and construed in accordance with, Hong Kong law. The Courts of Hong Kong shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this arrangement letter, the Comfort Letter or any matter arising from them.

### **Staffing**

28. [Name] will be the partner in charge of the services we will provide. [Name] will act as manager, with the help of [name], calling upon specialist staff as appropriate. We shall use reasonable endeavours to ensure that they are so involved but we may substitute those identified with others of equal or similar skills.

### **Fees and Certain Other Matters**

29. Details of our fees and proposed billing arrangements have been set out in a separate agreement with the Company [and the Guarantor], who will bear the sole responsibility for the payment thereof. Such agreement also sets out certain other matters in relation to the respective rights and responsibilities of the Company[, the Guarantor] and us in connection with the services to be performed by us in connection with the issuance of the Comfort Letter.

### **Other Terms and Conditions**

30. In no circumstances shall we be liable, other than in the event of our fraud, bad faith or wilful default, for any loss or damage, of whatsoever nature, arising from information material to our work being withheld or concealed from us or misrepresented to us by the directors, employees, or agents of the Company[, the Guarantor] or any other person of whom we may make inquiries unless, if in carrying out the procedures agreed under this arrangement letter, and solely as a result of information provided to us which we are required to consider or do consider, we conclude that there has been fraud, withholding, concealment or misrepresentation (or otherwise we conclude that any such information contains an inconsistency which clearly indicates that there may have been such a fraud, withholding, concealment or misrepresentation), and we fail to notify the Company[, the Guarantor] and the Named Addressees of such conclusion.
31. In the course of providing the Services we, [Accountants] Hong Kong, may, at our discretion, draw on the resource of other entities (whether or not incorporated) which carry on business under a name which includes all or part of the [Accountants] name or is otherwise within (or associated or connected with an entity) or is a correspondent firm of the worldwide network of [Accountants] ("other [Accountants] Firms") and their partners and employees as we deem appropriate, but provision of the Services will remain our responsibility alone.
32. The Addressees agree that the Addressees will not bring any claim (whether in contract, tort (including negligence) or otherwise) against any other [Accountants] Firm or its personnel in respect of the Services. Any partner or employee of any other [Accountants] Firm who deals with the Addressees in connection with the Services does so solely on our behalf and we are liable for their activities as if they were in all respects our partners or staff.
33. The Addressees will not bring any claim (whether in contract, tort (including negligence) or otherwise) arising out of or in connection with the Services against any of our employees personally, but this will not limit or exclude any liability we may have for their acts or omissions.

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<sup>29</sup> In exceptional circumstances, it may also be appropriate to bring down the Comfort Letter to another date. Such arrangements should be discussed on a case-by-case basis.

34. The provisions of paragraphs 31 to 33 of this arrangement letter have been stipulated expressly for the benefit of our employees, and other [Accountants] Firms and their partners and employees (together "Beneficiaries"). The Addressees agree that, each of the Beneficiaries has the right to rely on paragraphs 31 to 34 of this arrangement letter as if they were parties to this arrangement letter. Each of the other [Accountants] Firms which agrees to assist in the provision of the Services does so in reliance on the protections afforded to it by paragraphs 31 to 34 of this arrangement letter, the benefit of which we formally accept on its behalf.

#### **Prohibition on Assignment**

35. No party may assign any of its rights in relation to this arrangement letter without the prior written consent of the others against whom the rights may be asserted, save that any Addressee and we may assign any of such rights, or such rights may pass by operation of law, to any successor to all or part of its business without such consent, provided that notice is given to the other signatories to this arrangement letter prior to any step being taken to enforce any rights hereunder.

#### **Third Party Rights**

36. Other than as set out in paragraph 34 above, this arrangement letter shall not create or give rise to, nor shall it be intended to create or give rise to, any third party rights and no third party shall have any right to enforce or rely on any provision of this arrangement letter. Save where otherwise stated in paragraph 34 above, the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the laws of Hong Kong) shall not under any circumstances apply to this arrangement letter. Any rights conferred on third parties by this arrangement letter exclude the right to assign, and their consent is not required to rescind or vary this arrangement letter. For the avoidance of doubt, this paragraph shall not apply to the Addressees or the successors referred to in paragraph 35 above.

#### **Termination**

37. Any party to this arrangement letter may at any time terminate this arrangement letter for whatever reason upon written notice to the other parties. In the case of termination by us, notice to the Company[, the Guarantor] and the Named Addressees shall be sufficient notice.
38. Termination of this arrangement letter shall be without prejudice to any accrued rights of the parties to this arrangement letter. The provisions of this arrangement letter which expressly or by implication are intended to survive its termination or expiry will survive and continue to bind each party to this arrangement letter.

#### **Internet communication**

39. In connection with the Services the parties to this arrangement letter may from time to time communicate with each other electronically. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly each party to this arrangement letter accepts the limitations of electronic communication, and will use reasonable procedures to check for the then most commonly known viruses before sending information electronically.

#### **Miscellaneous**

40. Other than as set out in paragraph 29 above, this arrangement letter and the Appendix to it constitute the entire agreement for the provision of the Services between us to the exclusion of any other express or implied terms, whether expressed orally or in writing, including any conditions, warranties and representations and shall supersede all previous proposals, understandings, contracts, letters of engagement, undertakings, agreements and correspondence regarding the Services. Save as provided in this arrangement letter, no change in the terms of our arrangement with respect to the Services will be effective unless agreed in writing and signed by all parties to this arrangement letter.

41. This arrangement letter may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed and delivered at least one counterpart. Each counterpart shall constitute an original of this arrangement letter, but all the counterparts shall together constitute one and the same instrument.
42. If any term or terms of this arrangement letter shall be held to be invalid, illegal or unenforceable, such term or terms shall be deemed not to form part of this arrangement letter without prejudice to the enforceability of the remaining terms of this arrangement letter, provided always that if any such deletion substantially affects or alters the commercial basis of this arrangement letter, the parties to this arrangement letter will negotiate in good faith to amend and modify them as may be necessary or desirable in the circumstances.
43. Please acknowledge acceptance of the terms of our arrangement by signing and returning the enclosed copy of this arrangement letter.
44. If the Company[, the Guarantor] or the Addressees have any questions regarding this arrangement letter please do not hesitate to contact us.

Yours faithfully,

ABC & Co.  
Certified Public Accountants (Practising) [or Certified Public Accountants]  
Hong Kong  
Date

#### **Acknowledgement and Acceptance**

We acknowledge receipt of this arrangement letter and agree with the terms of your arrangement set out therein:

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Director  
for and on behalf of  
the board of XYZ Limited [and ABC Limited]

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Director  
for and on behalf of  
Lead Manager Limited/ [Named Addressee]  
(on its own behalf and as representative  
of each of the other Managers)

## Appendix 2

### Example Comfort Letter

*The following example comfort letters are provided for illustrative purposes only. They are intended to be used only as a guide to the possible form and content of a comfort letter that reporting accountants may wish to provide, and are not intended to suggest standard wording to be used in any particular set of circumstances. The contents of the comfort letter will vary according to the nature of the information in the investment circular, and the procedures agreed between reporting accountants, sponsors, and the issuer. When preparing a comfort letter, reporting accountants will need to ensure that the letter meets the requirements of this HKSIR.*

*As further explained in paragraph 69 of this HKSIR, where there is an international equity or debt offering not covered by relevant jurisdictional standards, reporting accountants refer to the requirements of HKSIR 400 (Revised). In practice, due for example, to different cut-off dates being applied to the procedures in respect of subsequent changes for the respective international and Hong Kong public offerings, it will often be the case that for practical purposes more than one comfort letter is issued for certain transactions. Example 1 illustrates a letter with respect to the Hong Kong public offering. Where a separate comfort letter is issued for the international offering the text below should be tailored as appropriate. In general, other than for certain specific textural differences reflecting for example, the terminology often used for an international offering and different cut-off dates, it is not expected that there would be significant differences between the comfort letters. Example 2 illustrates a letter with respect to a Debt Offering in reliance on Regulation S.*



**Example 1 – Hong Kong Public Equity Offering**

(letterhead of reporting accountants)

Date

To: The Directors, XYZ Limited  
[Address]

Sponsors Limited  
[Address]

[Other Named Addressee]<sup>30</sup>  
[Address]

[and each of the Hong Kong Underwriters as defined in the Hong Kong Underwriting Agreement dated [•] (the "Hong Kong Underwriters") identified below as an Addressee]<sup>30</sup>

Dear Sirs,

**Proposed Listing of [XYZ Limited] (the "Issuer") on the [Main Board/Growth Enterprise Market] of The Stock Exchange of Hong Kong Limited (the "Hong Kong Stock Exchange")**

This letter is written to you pursuant to the terms agreed between us in our arrangement letter dated [date] (the "Arrangement Letter"). Our engagement to prepare this letter has been performed in accordance with Hong Kong Standard on Investment Circular Reporting Engagements 400 (Revised), *Comfort Letters and Due Diligence Meetings* issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA").

This letter is addressed to [insert the names of each Named Addressee] and to each of the Hong Kong Underwriters that is an "Addressee" as defined in paragraph 3 of the Arrangement Letter and to the directors of the Issuer. Other than to those who have validly accepted the Arrangement Letter, we will not accept any responsibility to any party to whom this letter is shown or into whose hands it may come.

We confirm that we are independent with respect to the Issuer in accordance with the requirements of the Code of Ethics for Professional Accountants issued by the HKICPA.

**Selected Financial Information**

For the purposes of this letter, we have read the items that you have identified as indicated on the attached extract of the prospectus (attached as Appendix 1) of the Issuer and have performed the following procedures, which were applied as indicated by the letters explained below:<sup>31</sup>

- A Compared the amount or percentage to, or recalculated the amount and/or percentage from, the corresponding amount or percentage appearing in the historical financial information of the Issuer [and its subsidiaries ("the Group")] for the years ended 31 December 20X2, 31 December 20X3 and 31 December 20X4 and [periods ended [insert stub period balance sheet date] and [insert comparative stub period balance sheet date] as set out on pages [ ] to [ ] of the prospectus (the "Historical Financial Information"), as applicable, and found them to be in agreement.

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<sup>30</sup> Refer to Example 1, footnote 6, in Appendix 1 to this HKSIR.

<sup>31</sup> The purpose of the procedures described in this section is to compare amounts and to state whether such amounts are found to be in agreement or to recompute calculations and to state whether or not these were found to be arithmetically accurate.

- B Compared the amount or percentage to the corresponding amount or percentage appearing on a schedule prepared by the management of the Issuer and found the amount or percentage to be in agreement. Management of the Issuer has represented to us that the information on the schedule was derived from the regularly maintained accounting records of the [Issuer][Group] and was subject to the [Issuer's][Group's] internal controls over financial reporting. [We compared the amounts shown on the schedule prepared by the management of the Issuer with the accounting records and found such amounts to be in agreement.]
- C Recalculated the amount, percentage or ratio based on the information in the same sentence, paragraph or table and found them to be arithmetically accurate.
- D Recalculated the [United States dollar] amount based on the corresponding [*reporting currency*] amount and the rate of US\$[x] to [x] as specified on page [x] in the prospectus and found them to be arithmetically accurate. However, we make no comment as to the appropriateness of such rate or whether the [*reporting currency*] could have been, or could be, converted into [United States dollars] at that rate.
- E [Recalculated the amounts under "As Adjusted" in the "Capitalization [and Indebtedness]" section of the Offering memorandum based on the assumptions specified on page [x] of the Offering Memorandum and found them to be arithmetically accurate. However, we make no comment as to the reasonableness or appropriateness of those assumptions or as to the ultimate amount or use of proceeds or the appropriateness of the financial reporting presentation.<sup>32</sup>]

For the purposes of reporting our findings, in those instances in which one or more of the compared or recalculated amounts (including percentages and ratios) stated were rounded to some degree, we have nevertheless stated that we found the compared or recalculated amounts to be in agreement or arithmetically accurate if differences are attributable to rounding.

We make no representations regarding questions of legal interpretation or regarding the sufficiency for your purposes of the aforementioned procedures; also, such procedures do not constitute an assurance engagement performed in accordance with Hong Kong Standards on Auditing ("HKSAAs"), Hong Kong Standards on Review Engagements ("HKSREs"), Hong Kong Standards on Assurance Engagements [or other Hong Kong Standards on Investment Circular Reporting Engagements] issued by the HKICPA, and therefore would not necessarily reveal any material misstatement of the amounts, percentages or ratios identified above. Further, we have addressed ourselves solely to the foregoing data in the prospectus and we make no representations regarding the adequacy of disclosures or regarding whether any material facts have been omitted.

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<sup>32</sup> This procedure is only applicable for an international equity offering (hence the reference to an "Offering Memorandum" as opposed to a prospectus) and should only be performed and reported on if all of the information required to recalculate the amounts under "As Adjusted" are set out on the specified page in the Offering Memorandum. In an actual comfort letter in respect of an international equity offering, other conforming changes to the introductory paragraphs and other parts of the letter would be required reflecting, for example, the different terminology used for an international offering.

**Changes in Financial Position**<sup>33,34</sup>

For the purpose of this letter, we have [also] performed the following limited procedures:

- (1) We have:
- (a) read the minutes of meetings of shareholders and the board of directors of the Issuer [and its subsidiaries] held since [31 December 20X4 or such later reported stub period balance sheet date included in the prospectus], as set out in minute books at 22 May 20X5 (the "Cut-off Date") [(together with/excluding<sup>35</sup> the papers referred to in the minutes)], which the directors have advised us are complete; and
  - (b) read the unaudited management accounts of the [Issuer/Group] for the [four] month[s] ended 30 April 20X5 (the "April 20X5 Management Accounts") [(which the directors have advised us are the most recent management accounts available)] [(as agreed with you)<sup>36</sup>] and the corresponding unaudited management accounts for the previous year (the "April 20X4 Management Accounts").

Our objective in reading the documents referred to in paragraphs 1(a) and (b) above is to identify those matters which in our view, might, *prima facie*, be expected to impact the figures and changes set out in paragraph (3) below.

- (2) We have made inquiries of [certain officials of the Issuer/*name of officials*] with responsibility for financial and accounting matters (the "Persons Responsible for Financial and Accounting Matters") as to whether:

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<sup>33</sup> For the purpose of this example comfort letter limited assurance is provided in respect to the changes in financial position, rather than reporting accountant reporting in the form of agreed-upon-procedures. Should the form of agreed-upon-procedures be adopted, paragraphs (5) and (7) would be revised by reporting the factual findings obtained, for example the final sentence of paragraph (7) may be deleted and paragraph (5) may be revised to read:

We enquired of the Persons Responsible for Financial and Accounting Matters whether:

- (a) at 30 April 20X5 there were any decreases in [the issued share capital, cash and cash equivalents, net current assets or total current assets or increases in long-term debt or total current liabilities] of the [Group] as compared with the corresponding amounts as at [31 December 20X4 or such later reported stub period balance sheet date included in the prospectus] in the Historical Financial Information; and
- (b) in the period from [1 January] 20X5 to 30 April 20X5 there were any decreases in [turnover or profit before taxation or increases in net interest expense, or depreciation of fixed assets] of the Group, as compared to the corresponding period in the preceding year as shown in the April 20X4 Management Accounts.

Those Persons Responsible for Financial and Accounting Matters stated that there was no such increase or decrease except that the April 20X5 Management Accounts showed a [decrease/increase] in [insert line items] as compared with [31 December 20X4 or such later reported stub period balance sheet date included in the prospectus] and a [decrease/increase] in [insert line items] as compared with the [4] months ended 30 April 20X4, as set out in Appendix 2.

<sup>34</sup> Where the reporting accountants agree to perform a review of subsequent interim financial information not included in the prospectus for the purpose of providing limited assurance on subsequent changes, this may be referred to in the section headed "Changes in Financial Position" and any other corresponding changes made to the comfort letter as applicable. For example, the following language may be added to record the fact that the review was performed and the conclusion arising from that review:

For the purposes of this letter, with respect to the three-month period ended 31 March 20X5, we have performed procedures with reference to HKSRE 2410, *Review of Interim Financial Information Performed by the Independent Auditor of the Entity*, on the unaudited condensed statement of financial position of the Group as of 31 March 20X5, and the related unaudited condensed statements of comprehensive income, changes in equity and cash flows for the three-month period ended 31 March 20X5, attached to this comfort letter as Appendix 3.

Nothing came to our attention as a result of the foregoing procedures that caused us to believe that any material modification should be made to the unaudited condensed financial information described in the paragraph above and attached to this comfort letter as appendix 3, for them to be in conformity with [Hong Kong][International] Accounting Standard 34 "Interim Financial Reporting".

<sup>35</sup> Where practicable, on appropriate terms and provided sufficient time is available, the accountants may agree to review the papers referred to in the minutes.

<sup>36</sup> This wording would apply in circumstances where the Reporting Accountants and the Sponsors are aware of the date of the latest management accounts, but it is agreed that management accounts as of and for an earlier period are to be referred to in this letter.

- (a) those matters identified by us in the course of the work undertaken pursuant to paragraph (1) above have been reflected in the April 20X5 Management Accounts upon which the amounts and changes referred to in paragraph (3) below are based; and
- (b) the April 20X5 Management Accounts have been prepared and presented on a basis consistent with the accounting policies normally adopted by the Group and applied in preparing the Historical Financial Information.
- (3) We have compared the amounts shown in the schedule included in Appendix 2 to this letter prepared by the management of the Issuer (the "Schedule"), relating to [turnover, profit before taxation, net interest expense, depreciation of fixed assets, issued share capital, borrowings due after more than one year ("long-term debt"), cash and cash equivalents, net current assets, total current assets and total current liabilities], to the April 20X5 Management Accounts, April 20X4 Management Accounts or the Historical Financial Information as appropriate and found them to be in agreement. We have recalculated the changes set out in the Schedule and found them to be arithmetically accurate.
- (4) The procedures described in paragraphs (1) to (3) above do not constitute an audit [or review] in accordance with HKSAAs [or HKSREs] issued by the HKICPA. Nor do they provide any assurance that the April 20X5 Management Accounts have been prepared on a basis consistent with the April 20X4 Management Accounts, that such management accounts have been prepared in a reliable manner or that either have been prepared on a basis consistent with the Historical Financial Information. Consequently, our procedures would not necessarily reveal matters of significance with respect to the comments made in the following paragraphs and we make no representations as to the sufficiency for your purposes of any such procedures.
- (5) In respect of the foregoing procedures nothing has come to our attention that causes us to believe that:
- (a) at 30 April 20X5 there were any decreases in [the issued share capital, cash and cash equivalents, net current assets or total current assets] or [increases in long-term debt or total current liabilities] of the [Group] as compared with the corresponding amounts as at [31 December 20X4 or such later reported stub period balance sheet date included in the prospectus] in the Historical Financial Information; and
- (b) in the period from [1 January] 20X5 to 30 April 20X5 there were any decreases in [turnover or profit before taxation or increases in net interest expense, or depreciation of fixed assets] of the Group, as compared to the corresponding period in the preceding year as shown in the April 20X4 Management Accounts.
- except that the April 20X5 Management Accounts showed a [decrease/increase] in [insert line items] as compared with [31 December 20X4 or such later reported stub period balance sheet date included in the prospectus] and a [decrease/increase] in [insert line items] as compared with the [4] months ended 30 April 20X5, as set out in Appendix 2.<sup>37</sup>
- (6) Since [the directors have advised us that no management accounts have been prepared up to any date subsequent to 30 April 20X5][we have agreed with you to read the unaudited management accounts for the [four] month[s] ended 30 April 20X5], the procedures carried out by us with respect to changes in financial statement items<sup>38</sup> of the [Issuer/Group] after 30 April 20X5 have of necessity been even more limited than those carried out for the period up to that date. Up to the Cut-off Date (our work did not extend to the period from the Cut-off Date to the date of this letter), we have made inquiries of the Persons Responsible for Financial and Accounting Matters as to:

<sup>37</sup> Line items described as exceptions here should not be listed in 5(a) or (b).

<sup>38</sup> Reporting accountants should consider the guidance in paragraph 45 in determining the appropriateness of which specific line items to provide comfort.

COMFORT LETTERS AND DUE DILIGENCE MEETINGS

- (a) whether there has been any decrease in [issued share capital, cash and cash equivalents, net current assets or total current assets] or increase in [long term debt or total current liabilities] of the [Group] at the Cut-off Date as compared with the corresponding amounts shown at [31 December 20X4 or such later reported stub period balance sheet date included in the prospectus] in the Historical Financial Information; and
- (b) whether for the period from [1 January 20X5] up to the Cut-off Date there have been any decreases in [turnover or profit before taxation], or increases in [net interest expense or depreciation of fixed assets] of the [Group] as compared with the corresponding period in the preceding year.
- (7) The persons responsible for financial and accounting matters advised us that they were not aware of any increase in [long term debt, total current liabilities, net interest expense or depreciation of fixed assets] or decrease in any of the other listed items described in paragraph (6)(a) or (b) above except that [as at the Cut-off Date as compared with [31 December 20X4 or such later reported stub period balance sheet date included in the prospectus] [there was an [increase][decrease] in [*state line items*]]/[for the period from 1 [January 20X5] to the Cut-off Date as compared with the corresponding period in the previous year there was an [increase][decrease] in [*state line items*]]. On the basis of the responses to these inquiries and our reading of the minutes as described in paragraph (1) above, [except for all instances of increases or decreases advised by the Persons Responsible for Financial and Accounting Matters as set out above], nothing has come to our attention that causes us to believe that there was any such increase or decrease.
- (8) We have not performed an audit in respect of any historical financial information of the Issuer or the Group as of any date or for any period subsequent to [31 December 20X4 or such later reported stub period balance sheet date included in the prospectus] in accordance with HKSAAs issued by the HKICPA. Therefore we are unable to and do not express any opinion on the financial position, results of operations or cash flows of the Issuer [or the Group] as of any date or for any period subsequent to [31 December 20X4 or such later reported stub period balance sheet date included in the prospectus].

This letter is solely for your information and to assist the Addressees in conducting and documenting their due diligence investigation of the affairs of the [Issuer/Group] in connection with the issue of new shares covered by the prospectus and except as permitted in the Arrangement Letter, it is not to be used, circulated, quoted, or otherwise referred to for any other purpose, nor is to be filed with or referred to in whole or in part in the prospectus or any other document.

Yours faithfully,

ABC & Co.  
Certified Public Accountants (Practising) [or Certified Public Accountants]  
Hong Kong  
Date

Enclosures: Appendix 1 - Extract of prospectus  
Appendix 2 - Schedule prepared by the Issuer's management  
[Appendix 3 – Unaudited condensed consolidated financial statements for the period ended [*insert interim balance sheet date reviewed*] and [*insert corresponding date in prior year*]

**Example 2 – Debt Offering in reliance on Regulation S**

(letterhead of independent accountants)

Date

To: The Directors, [XYZ Limited and ABC Limited]  
[Address]

[Lead Manager Limited]  
[Address]

[Other Named Addressee]<sup>39</sup>  
[Address]

[and each of the joint lead managers and managers as defined in the Subscription Agreement dated [x] (the "Managers") identified below as an Addressee]<sup>39</sup>

Dear Sirs,

**Proposed Issue (the "Issue") of [x] (the "Notes") by [XYZ Limited] (the "Company") [and guaranteed by [ABC Limited] (the "Guarantor")]**

This letter is written to you pursuant to the terms agreed between us in our arrangement letter dated [date] (the "Arrangement Letter"). Our engagement to prepare this letter has been performed in accordance with Hong Kong Standard on Investment Circular Reporting Engagements 400 (Revised), *Comfort Letters and Due Diligence Meetings* issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA").

This letter is addressed to [insert the names of each Named Addressee] and to each of the Managers that is an "Addressee" as defined in paragraph 3 of the Arrangement Letter and to the directors of the Company [and the Guarantor]. Other than to those who have validly accepted the Arrangement Letter, we will not accept any responsibility to any party to whom this letter is shown or into whose hands it may come.

We confirm that we are independent with respect to the Company [and the Guarantor] in accordance with the requirements of the Code of Ethics for Professional Accountants issued by the HKICPA.

On pages [x to x], the offering circular of the Company with respect to the Notes dated 20[x] (the "Offering Circular") sets out certain financial statements as at and for the [three] years ended 31 December 20X2, 20X3 and 20X4 (the "Historical Financial Statements") [and the [six] months ended 30 June 20X4 and 20X5] (the "Interim Financial Statements") of the [Company/Guarantor] and its subsidiaries (the "Group"). We have read this information and have compared it with that shown in the published audited consolidated financial statements as at and for the [three] years ended 31 December 20X2, 20X3 and 20X4 [and the published unaudited consolidated interim financial statements as at and for the [six] months ended 30 June 20X4 and 20X5] of the [Company/Guarantor]. We confirm that these financial statements have been found to be in agreement with the published audited consolidated financial statements for the relevant years [or, as the case may be, the published unaudited consolidated interim financial statements for such period]. [We did not conduct a review of such interim financial statements in accordance with the standards and guidance issued by the [HKICPA] or any professional body in any other jurisdiction].

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<sup>39</sup> Refer to Example 4, footnote 24, in Appendix 1 to this HKSIR.

### Selected Financial Information

For the purposes of this letter, we have read the items that you have identified as indicated on the attached extract of the Offering Circular (attached as Appendix 1) and have performed the following procedures, which were applied as indicated by the letters explained below<sup>40</sup>:

- A Compared the amount or percentage to, or recalculated the amount and/or percentage from, the corresponding amount or percentage appearing in the Historical Financial Statements [or the Interim Financial Statements] as set out in the Offering Circular, as applicable, and found them to be in agreement.
- B Compared the amount or percentage to the corresponding amount or percentage appearing on a schedule prepared by the management of the [Company/Guarantor] and found the amount or percentage to be in agreement. The management of the [Company/Guarantor] has represented to us that the information in the schedule was derived from the regularly maintained accounting records of the Group and was subject to the [Company's/Guarantor's] internal controls over financial reporting. [We compared the amounts shown on the schedule prepared by the management of the [Company/Guarantor] with the accounting records of the Group and found such amounts to be in agreement.]
- C Recalculated the amount, percentage or ratio based on the information in the same sentence, paragraph or table and found them to be arithmetically accurate.
- D Recalculated the [United States dollar] amount based on the corresponding [*reporting currency*] amount and the rate of US\$[x] to [x] as specified on page [ ] in the Offering Circular and found them to be arithmetically accurate. However, we make no comment as to the appropriateness of such rate or whether the [*reporting currency*] could have been, or could be, converted into [United States dollars] at that rate.
- E Recalculated the amounts under "As Adjusted" in the "Capitalization [and Indebtedness]" section of the Offering Circular based on the assumptions specified on page [x] of the Offering Circular and found them to be arithmetically accurate. However, we make no comment as to the reasonableness or appropriateness of those assumptions or as to the ultimate amount or use of proceeds or the appropriateness of the financial reporting presentation.<sup>41</sup>

For the purposes of reporting our findings, in those instances in which one or more of the compared or recalculated amounts (including percentages and ratios) stated were rounded to some degree, we have nevertheless stated that we found the compared or recalculated amounts to be in agreement or arithmetically accurate if differences are attributable to rounding.

We make no representations regarding questions of legal interpretation or regarding the sufficiency for your purposes of the aforementioned procedures; also, such procedures do not constitute an assurance engagement performed in accordance with Hong Kong Standards on Auditing ("HKSAAs"), Hong Kong Standards on Review Engagements ("HKSREs"), Hong Kong Standards on Assurance Engagements [or other Hong Kong Standards on Investment Circular Reporting Engagements] issued by the HKICPA, and therefore would not necessarily reveal any material misstatement of the amounts, percentages or ratios identified above. Further, we have addressed ourselves solely to the foregoing data in the Offering Circular and we make no representations regarding the adequacy of disclosures or regarding whether any material facts have been omitted.

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<sup>40</sup> The purpose of the procedures described in this section is to compare amounts and to state whether such amounts are found to be in agreement or to recompute calculations and to state whether or not these were found to be arithmetically accurate.

<sup>41</sup> This procedure should only be performed and reported on if all of the information required to recalculate the amounts under "As Adjusted" are set out on the specified page in the Offering Circular.

**Changes in Financial Position<sup>42, 43</sup>**

For the purpose of this letter, we have [also] performed the following limited procedures:

- (1) We have:
- (a) read the minutes of meetings of shareholders and the board of directors of the [Company/Guarantor] [and its subsidiaries] held since 31 December 20X4, as set out in minute books at 22 July 20X5 (the "Cut-off Date") [(together with/excluding<sup>44</sup> the papers referred to in the minutes)], which the directors have advised us are complete; and
  - (b) read the unaudited consolidated management accounts of the [Company/Guarantor] for the [one/seven] months ended 31 July 20X5 (the "July 20X5 Management Accounts") [(which the directors have advised us are the most recent management accounts available)][(as agreed with you)<sup>45</sup>] and the corresponding unaudited consolidated management accounts for the previous year (the "July 20X4 Management Accounts").

Our objective in reading the documents referred to in paragraphs 1(a) and (b) above is to identify those matters which in our view, might, *prima facie*, be expected to impact the figures and changes set out in paragraph (3) below.

- (2) We have made inquiries of [certain officials of the Company/Guarantor/*name of officials*] with responsibility for financial and accounting matters (the "Persons Responsible for Financial and

<sup>42</sup> For the purpose of this example comfort letter limited assurance is provided in respect to the changes in financial position, rather than reporting in the form of agreed-upon-procedures. Should the form of agreed-upon-procedures be adopted, paragraphs (5) and (7) would be revised by reporting the factual findings obtained, for example the final sentence of paragraph (7) may be deleted and paragraph (5) may be revised to read:

We enquired of the Persons Responsible for Financial and Accounting Matters whether:

- (a) at 31 July 20X5 there were any decreases in [the issued share capital, cash and cash equivalents, net current assets or total current assets or increases in long-term debt or total current liabilities] of the [Group] as compared with the corresponding amounts as at [31 December 20X4/30 June 20X5] in the [Historical Financial Statements/Interim Financial Statements] included in the Offering Circular; and
- (b) in the period from 1 [January/July] 20X5 to 31 July 20X5 there were any decreases in [turnover or profit before taxation or increases in net interest expense, or depreciation of fixed assets] of the [Group], as compared to the corresponding period in the preceding year as shown in the July 20X4 Management Accounts.

Those Persons Responsible for Financial and Accounting Matters stated that there was no such increase or decrease except that the July 20X5 Management Accounts showed a [decrease/increase] in [insert line items] as compared with [31 December 20X4/30 June 20X5] in the [Historical Financial Statements/Interim Financial Statements] included in the Offering Circular and a [decrease/increase] in [insert line items] as compared with the [1/7] months ended 31 July 20X4, as set out in Appendix 2.

<sup>43</sup> Where the independent accountants agree to perform a review of Interim Financial Statements included in the Offering Circular, or subsequent interim financial information not included in the Offering Circular for the purpose of providing limited assurance on subsequent changes, this may be referred to in the section headed "Changes in Financial Position" and any other corresponding changes made to the comfort letter as applicable. For example, the following language may be added to record the fact that the review was performed and the conclusion arising from that review:

For the purposes of this letter, with respect to the six-month period ended 30 June 20X5, we have performed procedures with reference to HKSRE 2410, *Review of Interim Financial Information Performed by the Independent Auditor of the Entity*, on the unaudited condensed consolidated statement of financial position of the Group as of 30 June 20X5, and the related unaudited condensed consolidated statements of comprehensive income, changes in equity and cash flows for the six-month period ended 30 June 20X5[, attached as Appendix 3 to this comfort letter].

Nothing came to our attention as a result of the foregoing procedures that caused us to believe that any material modification should be made to the unaudited condensed consolidated financial statements described in the paragraph above and attached to this comfort letter as Appendix 3, for them to be in conformity with [Hong Kong][International] Accounting Standard 34 "Interim Financial Reporting".

<sup>44</sup> Where practicable, on appropriate terms and provided sufficient time is available, the independent accountants may agree to review the papers referred to in the minutes.

<sup>45</sup> This wording would apply in circumstances where the independent accountants and the Lead Managers are aware of the date of the latest management accounts, but it is agreed that management accounts as of and for an earlier period are to be referred to in this letter.



Accounting Matters") as to whether:

- (a) those matters identified by us in the course of the work undertaken pursuant to paragraph (1) above have been reflected in the July 20X5 Management Accounts upon which the amounts and changes referred to in paragraph (3) below are based; and
  - (b) the July 20X5 Management Accounts have been prepared and presented on a basis consistent with the accounting policies normally adopted by the Group and applied in preparing the 31 December 20X4 audited consolidated financial statements.
- (3) We have compared the amounts shown in the schedule included in Appendix 2 to this letter prepared by the management of the [Company/Guarantor] (the "Schedule"), relating to [turnover, profit before taxation, net interest expense, depreciation of fixed assets, issued share capital, borrowings due after more than one year ("long-term debt"), cash and cash equivalents net current assets, total current assets and total current liabilities], to the July 20X5 Management Accounts, July 20X4 Management Accounts or the 31 December 20X4 audited consolidated financial statements as appropriate and found them to be in agreement. We have recalculated the changes set out in the Schedule and found them to be arithmetically accurate.
- (4) The procedures described in paragraphs (1) to (3) above do not constitute an audit [or review] in accordance with HKSAAs [or HKSREs] issued by the HKICPA. Nor do they provide any assurance that the July 20X5 Management Accounts have been prepared on a basis consistent with the July 20X4 Management Accounts, that such management accounts have been prepared in a reliable manner or that either have been prepared on a basis consistent with the 31 December 20X4 audited consolidated financial statements. Consequently, our procedures would not necessarily reveal matters of significance with respect to the comments made in the following paragraphs and we make no representations as to the sufficiency for your purposes of any such procedures.
- (5) In respect of the foregoing procedures nothing has come to our attention that causes us to believe that:
- (a) at 31 July 20X5 there were any decreases in [the issued share capital, cash and cash equivalents, net current assets or total current assets] or increases in [long-term debt or total current liabilities] of the [Group] as compared with the corresponding amounts as at [31 December 20X4/30 June 20X5] in the [Historical Financial Statements/Interim Financial Statements] included in the Offering Circular; and
  - (b) in the period from 1 [January/July] 20X5 to 31 July 20X5 there were any decreases in [turnover or profit before taxation] or increases in [net interest expense, or depreciation of fixed assets] of the [Group], as compared to the corresponding period in the preceding year as shown in the July 20X4 Management Accounts;

except that the July 20X5 Management Accounts showed a [decrease/increase] in [*insert line items*] as compared with [31 December 20X4/30 June 20X5] and a [decrease/increase] in [*insert line items*] as compared with the [one/seven] months ended 31 July 20X5, as set out in Appendix 2.<sup>46</sup>

- (6) Since [the directors have advised us that no management accounts have been prepared up to any date subsequent to 31 July 20X5][we have agreed with you to read the unaudited management accounts for the [one/seven] months ended 31 July 20X5], the procedures carried out by us with respect to changes in financial statement items<sup>47</sup> of the [Company/Guarantor] after 31 July 20X5 have of necessity been even more limited than those carried out for the period up to that date. Up to the Cut-off Date (our work did not extend to the period from the Cut-off Date to the date of this letter), we have made inquiries of the Persons Responsible for

<sup>46</sup> Line items described as exceptions here should not be listed in 5(a) or (b).

<sup>47</sup> Independent accountants should consider the guidance in paragraph 45 in determining the appropriateness of which specific line items to provide comfort.

Financial and Accounting Matters as to:

- (a) whether there have been any decreases in [issued share capital, cash and cash equivalents, net current assets or total current assets] or increases in [long term debt or total current liabilities] of the [Group] at the Cut-off Date as compared with the corresponding amounts shown at [31 December 20X4/30 June 20X5] in the [Historical Financial Statements/Interim Financial Statements] included in the Offering Circular; and
  - (b) whether for the period from 1 [January/July] 20X5 up to the Cut-off Date there have been any decreases in [turnover or profit before taxation], or increases in [net interest expense or depreciation of fixed assets] of the [Group] as compared with the corresponding period in the preceding year.
- (7) The Persons Responsible for Financial and Accounting Matters advised us that they were not aware of any increase in [long term debt, total current liabilities, net interest expense or depreciation of fixed assets] or decrease in any of the other listed items described in paragraph (6)(a) or (b) above except that [as at the Cut-off Date as compared with [31 December 20X4/30 June 20X5] [there was an [increase][decrease] in [*state line items*]]/[for the period from 1 [January/July] to the Cut-off Date as compared with the corresponding period in the previous year there was an [increase][decrease] in [*state line items*]]. On the basis of the responses to these inquiries and our reading of the minutes as described in paragraph (1) above, [except for all instances of increases or decreases advised by the Persons Responsible for Financial and Accounting Matters as set out above] nothing has come to our attention that causes us to believe that there was any such increase or decrease.
- (8) We have not performed an audit in respect of any historical financial statements of the [Company/Guarantor] or the Group as of any date or for any period subsequent to 31 December 20X4 in accordance with HKSA's issued by the HKICPA or the standards of any other professional body in any other jurisdiction. Therefore, we are unable to and do not express any opinion on the financial position, results of operations or cash flows of the [Company/Guarantor] or the Group as of any date or for any period subsequent to 31 December 20X4.

This letter is solely for your information and to assist the Addressees in conducting and documenting their due diligence investigation of the affairs of the [Company/Group] in connection with the Issue covered by the Offering Circular and except as permitted in the Arrangement Letter, it is not to be used, circulated, quoted, or otherwise referred to for any other purpose, nor is to be filed with or referred to in whole or in part in the Offering Circular or any other document.

Yours faithfully,

ABC & Co.  
Certified Public Accountants (Practising) [or Certified Public Accountants]  
Hong Kong  
Date

Enclosures: Appendix 1 – Extract of Offering Circular  
Appendix 2 - Schedule prepared by the [Company's/Guarantor's] management  
[Appendix 3 – Unaudited condensed consolidated financial statements for the period ended [*insert interim balance sheet date reviewed*] and [*insert corresponding date in prior year*]

## Appendix 3

### Example Bring-down Letter

*The following example bring-down letter (that can be used for either a debt or equity offering as appropriate) is provided for illustrative purposes only. It is intended to be used only as a guide to the possible form and content of a bring-down letter that reporting accountants may wish to provide, and is not intended to suggest standard wording to be used in any particular set of circumstances. The contents of the bring-down letter will vary according to the nature of the information in the investment circular, and the procedures agreed between reporting accountants, sponsors, and the issuer. When preparing a bring-down letter, reporting accountants will need to ensure that the letter meets the requirements of this HKSIR.*

Date

To: The Directors, [XYZ Limited and ABC Limited]

[Sponsors Limited/Lead Managers]  
[Address]

[Other Named Addressee]<sup>48</sup>  
[Address]

[Each of the [Hong Kong underwriters/Managers] identified below as an Addressee]<sup>48</sup>

Dear Sirs:

We refer to our letter of [*date of previous comfort letter*] relating to the [prospectus/Offering Circular] of XYZ Limited (the ("Company"/"Issuer") dated [*date*] prepared in connection with the [public] offering of [*description of security*] of the [Company/Issuer]. We reaffirm as of the date hereof (and as though made on the date hereof) all statements made in that letter except that, for purposes of this letter:

1. the reading of minutes described in item 1(a) of that letter has been carried out through [x] 20X5 (the "New Cut-off Date");
2. the references to the unaudited management accounts for the [x] months ended [*date*] 20X5 and April 20X4, in items 1(b), 2, and 3 and paragraph 4 of that letter are changed to the unaudited management accounts for the [x] months ended [*date*] 20X5 and [*month*] 20X4 respectively. [The Directors of the [Company/Issuer] have advised us that no such financial statements as of any date or for any period subsequent to [*date*] 20X5 were available];
3. the references to [*date*] 20X5, the period from [*date*] 20X5 to [*date*] 20X5 and [*date*] 20X4 in item 5 of that letter are changed to [*date*] 20X5, the period from [*date*] 20X5 to [*date*] 20X5 and [*month*] 20X4 respectively; and
4. the references to [*date*] 20X5 and the cut-off date in item 6 of that letter are changed to [*date*] 20X5, and the New Cut-Off date respectively.

[Or where no management accounts have been prepared since those referred to in the Comfort Letter, item 2 is replaced as follows and items 3 and 4 deleted :

2. the inquiries covered in item 6 of that letter have been carried out to the New Cut-Off date.]

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<sup>48</sup> Refer to Appendix 1.

5. Our work did not extend to the period from [date] 20X5 to [the closing date] inclusive.

This letter is addressed to [*insert the names of each Named Addressee*] and to each of the [Hong Kong underwriters/Managers] that is an "Addressee" as defined in paragraph 3 of the Arrangement Letter and to the directors of the Company [and the Guarantor]. Other than to those who have validly accepted the Arrangement Letter, we will not accept any responsibility to any party to whom this letter is shown or into whose hands it may come.

This letter is solely for your information and to assist the Addressees in conducting and documenting their due diligence investigation of the affairs of the [Issuer][Group] in connection with the [*describe offering*] covered by the [prospectus/Offering Circular] and except as permitted in the Arrangement Letter it is not to be used, circulated, quoted, or otherwise referred to for any other purpose, nor is to be filed, with or referred to in whole or in part in the [prospectus/Offering Circular] or any other document.

Yours faithfully,

ABC & Co  
Certified Public Accountants (Practising) [or Certified Public Accountants]  
Hong Kong  
Date

## Appendix 4

### Example Issuer's Representation Letter on Subsequent Changes

*The following example representation letter is provided for illustrative purposes only. It is intended to be used only as a guide to the possible form and content of a representation letter, and is not intended to suggest standard wording to be used in any particular set of circumstances.*

*Where a bring-down letter is provided on subsequent changes, the Issuers representations in respect to matters covered in that letter should also be obtained<sup>49</sup>.*

(letterhead of the Issuer)

Date

To [Name of reporting accountants]

Dear Sirs

#### **Proposed Listing of XYZ Limited on the [Main Board/Growth Enterprise Market] of The Stock Exchange of Hong Kong Limited (the "Hong Kong Stock Exchange")**

In connection with the proposed listing of XYZ Limited, we certify to the best of our knowledge and belief that during the period from 31 December 20X4 to date, no events have occurred which have a material effect on the historical financial information or which should be disclosed in order to keep those information from being misleading<sup>50, 51</sup>.

With respect to the unaudited management accounts as at 30 April 20X5 and 20X4 and for the four-month periods ended 30 April 20X5 and 20X4, we certify to the best of our knowledge and belief that:

- a. such management accounts were prepared in accordance with accounting policies and practices consistent in all material respects with those followed in the preparation of the historical financial information contained in the Prospectus, except as set forth in the Prospectus;
- b. such management accounts present fairly the information purported to be shown thereby;
- c. no material adjustment of such management accounts is required and no adjustments other than those necessary for fair presentation of the results for those periods have been reflected therein.

Also to the best of our knowledge and belief, except in all instances for changes that the Prospectus discloses have occurred or may occur:

- d. at 22 May 20X5 there has been no decrease in the issued share capital, net current assets or total current assets or increase in long-term debt or total current liabilities of the Group, as compared with amounts shown in the 31 December 20X4 balance sheet of the historical financial information;

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<sup>49</sup> Not illustrated in this HKSIR.

<sup>50</sup> Any exception should be spelled out in the letter

<sup>51</sup> Where the reporting accountants perform a review of interim financial information in order to provide negative assurance on subsequent changes, representations in respect of the interim financial information are also obtained. These representations are not illustrated in this example letter.

COMFORT LETTERS AND DUE DILIGENCE MEETINGS

- e. for the period 1 January 20X5 to 22 May 20X5 there has been no decrease, as compared with the corresponding period in the preceding year, in turnover, profit before taxation or increase in net interest expense or depreciation of fixed assets.

Further, we confirm that:

- f. no audited financial statements of the Group are available as at any date or for any period subsequent to 31 December 20X4, and no management accounts are available as at any date or for any period subsequent to 30 April 20X5;
- g. the minutes of all meetings of the shareholders and the board of directors are entered up to 15 May 20X5 in the minute books, and no such meetings have been held since that date.
- h. We confirm that we are solely responsible for the information in the schedules referred to in tick mark B under the section heading "Selected Financial Information" of your comfort letter dated [Letter Date], with respect to the Prospectus, and that the information was derived from the Group's regularly maintained accounting records and subject to the Group's internal controls over financial reporting.

Yours faithfully

For and on behalf of XYZ Limited

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[name]  
Managing Director

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[name]  
Finance Director

## Appendix 5A

### Example Written Oral Due Diligence Acknowledgement

*In accordance with paragraph 61 of this HKSIR, before attending a due diligence meeting, reporting accountants should establish a written understanding and agreement as to the terms of the engagement with the issuer and the sponsor(s), manager(s) or, as the case may be, arranger(s)/dealer(s) (and, if applicable, other parties who have due diligence obligations and who will be a "named addressee" of the arrangement letter) as to the basis on which the reporting accountants agree to attend the due diligence meeting. This can be achieved by having the arrangement letter signed and executed prior to the due diligence meeting or having a master agreement with the relevant financial intermediaries (see Appendix 5B for an example of such master agreement). However, in the event that the arrangement letter has not been executed and the due diligence meeting transaction is not otherwise governed by a master agreement, the reporting accountants should obtain a written acknowledgement from the sponsor(s), manager(s) or, as the case may be, arranger(s)/dealer(s) and, if applicable, each of the other named addressees of the arrangement letter, as to the basis on which the reporting accountants agree to attend the due diligence meeting before the signing of the arrangement letter. Reporting accountants are reminded that this written acknowledgement does not replace the execution of the arrangement letter which may be at a later date after the due diligence meeting.*

*An example of such acknowledgement is as follows:*

[Legal name of institution], as the [sponsor]/[manager]/[arranger]/[dealer] of the proposed [[initial public offering]/[programme establishment] of [XYZ Limited] (the "[Proposed Offering]/[Programme Establishment]"), acknowledges that:

- (i) we are aware of the due diligence guidance [included in the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited which will be followed by us in connection with the [Proposed Offering]/[Programme Establishment]] / [issued by the International Capital Market Association from time to time, which will be followed by us in connection with the [Proposed Offering]/[Programme Establishment];
- (ii) the oral due diligence discussions that involve [Reporting Accountants] in connection with the [Proposed Offering]/[Programme Establishment] are those contemplated by paragraph 24 of the form of arrangement letter set out in Appendix 1 of Hong Kong Standard on Investment Circular Reporting Engagements 400 (Revised) (the "HKSIR400 AL Form") and will be governed by the terms of such paragraph 24 (with therein [legal name of institution] referred to as "the Addressee" and [Reporting Accountants] referred to as "we, our and us");
- (iii) if we decide to proceed with and participate in the [Proposed Offering]/[Programme Establishment], the arrangement letter to be entered into between [XYZ Limited], us and [Reporting Accountants] in connection with the [Proposed Offering]/[Programme Establishment] (the "Arrangement Letter") will be based on the HKSIR400 AL Form, with those amendments agreed by the parties thereto as necessary to reflect the particulars of the [Proposed Offering]/[Programme Establishment].

This acknowledgment will be superseded by the Arrangement Letter upon the signing of the Arrangement Letter.

## Appendix 5B

### Example Master Agreement Regarding Due Diligence Meetings

*This agreement has been developed in consultation with stakeholders. As explained in paragraph 62 of this HKSIR, reporting accountants may enter into a master agreement with the sponsor(s), manager(s) or, as the case may be, arranger(s)/dealer(s) (and, if applicable, other parties who have due diligence obligations and who will be a "named addressee" of the arrangement letter) to govern the basis on which the reporting accountants agree to attend the due diligence meeting prior to the execution of the arrangement letter. Execution of this master agreement, however, does not replace the requisite execution of the arrangement letter among the issuer, the reporting accountants and the relevant financial intermediaries. Reporting accountants are reminded to adopt appropriate means to satisfy themselves that proper master agreements are executed with the financial intermediaries attending the due diligence meeting. In instances where no master agreement is in place for some or all of the financial intermediaries attending the due diligence meeting, reporting accountants may consider the use of a written acknowledgement as explained in paragraph 61 of this HKSIR from the relevant financial intermediaries as appropriate.*

*This Agreement only applies in the context of reporting accountants issuing a comfort letter or taking part in a due diligence meeting with sponsors, global coordinators, bookrunners, lead managers or other managing underwriters for an offering of securities under the Hong Kong Standard on Investment Circular Reporting Engagements 400 (Revised), Comfort Letters and Due Diligence Meetings issued by the Hong Kong Institute of Certified Public Accountants.*

#### Agreement Regarding Oral Due Diligence

THIS AGREEMENT is between the undersigned manager (the "**Manager**") who may act as sponsor, global coordinator, bookrunner, lead manager and/or manager and the undersigned accounting firm, including its partners, principals, employees and subcontractors, collectively, (the "**Accounting Firm**"), and is made as of the date set forth above the signature blocks below (the "**Effective Date**").

#### Section 1. Agreement regarding discussions.

- (a) The Manager and the Accounting Firm each agrees that the standards on Due Diligence Meetings set out in paragraphs 59-68 of the Hong Kong Standard on Investment Circular Reporting Engagements 400 (Revised) ("**HKSIR 400**") issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA") apply to oral due diligence discussions between the Manager and the Accounting Firm occurring on or after the Effective Date and until the termination of this Agreement, in each offering of securities *provided, however*, that (i) this Agreement shall not apply if either party gives written notice to the other party prior to the commencement of oral due diligence discussions for a specific offering that the Agreement shall not apply to those oral discussions for that offering, or (ii) this Agreement shall cease to apply when the parties enter into an arrangement letter for a specific offering substantially in the form provided as Appendix I of HKSIR 400 (or as otherwise agreed between the Manager and the Accounting Firm). Except to the extent the context requires otherwise, expressions defined in HKSIR 400 shall have the same meanings in this Agreement.
- (b) In consideration for the Accounting Firm orally responding to questions from the Manager in the course of due diligence, the Manager agrees that the Accounting Firm shall have no liability to the Manager in contract or in tort (including negligence) for its oral answers to such questions other than for an oral statement known to be false or misleading when made and made with intent to deceive. Subject to the above, nothing in this paragraph shall prejudice the Manager's ability to rely on a non-recourse basis (meaning without any liability on the Accounting Firm's part except for oral statements known to be false or misleading when made and made with intent to deceive) on any comments the Accounting Firm may provide orally, either in the context of establishing or seeking to establish any due diligence defence in connection with any court, arbitral, regulatory or administrative proceedings or otherwise for the purposes of resolving either actual or potential proceedings, investigations, claims or disputes in respect of any offering circular prepared in



connection with an issuance of securities or otherwise in connection with any issuance of securities. This paragraph does not otherwise affect any claim or defense that the parties may have vis-à-vis against each other based on statements or conduct other than in oral due diligence discussions. This paragraph also does not (i) affect any claim or defense that the parties have vis-à-vis against third parties, or (ii) affect the ability of the Manager to use or refer to the Accounting Firm's oral statements in asserting claims against or defending against claims by third parties.

**Section 2. *Termination.***

Either party may terminate this Agreement at any time with immediate effect upon written notice to the other party. Any such termination shall be prospective only and shall not apply to any discussions that have occurred prior to such termination, as to which this Agreement shall remain in full force and effect.

**Section 3. *Notices.***

Any notice hereunder by one party shall be sent to the other at its address set forth below its signature to this Agreement. Any notice shall be effective when received.

**Section 4. *Counterparts.***

This Agreement may be executed in counterparts, which together shall be considered one original.

**Section 5. *Severability.***

If any provision of this Agreement is found by a court to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth herein.

**Section 6. *Governing Law.***

This Agreement shall be governed by and construed in accordance with the laws of Hong Kong. The Courts of Hong Kong shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this Agreement or any matter arising from it.

**Section 7.**

A person or entity that is not a party to this Agreement shall have no right to enforce any of its terms under the Contracts (Rights of Third Parties) Ordinance (Cap. 623, Laws of Hong Kong).

*[Signature Page Follows]*

**IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date set forth below.**

**Effective Date: [●] 2016**

**Manager:**

**Accounting Firm:**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Name:**

**Name:**

**Title:**

**Title:**

**Address for Notices:**

**Address for Notices:**

- **Attention:**
- **Facsimile:**
- **Telephone:**

- **Attention:**
- **Facsimile:**
- **Telephone:**

## Appendix 6

### Examples of Questions Commonly Asked in Due Diligence Meetings and Comments on the Reporting Accountants' Response

The following examples are to be read in conjunction with paragraphs 59 – 68 of HKSIR 400 (Revised).

Usually, the reporting accountants' response to questions asked by the sponsor in a due diligence meeting can be brief. The comments on the questions cited below are more detailed than the responses that would usually be required, and are intended as general guidance about matters the reporting accountants would normally consider in determining a response. The comments are not intended as illustrations of the answer that would be appropriate in every situation.

- A. Questions the reporting accountants are usually able to answer (A1-A13)
  - B. Questions to which the reporting accountants are unable to respond in the terms in which they are asked (B1-B5)
  - C. Questions properly addressed to management (C1-C3)
- A. Questions the reporting accountants are usually able to answer (A1-A13)**

Following are a number of questions to which the reporting accountants are usually able to respond, with comments as to the response that might be appropriate.

**Question A1      How long have you (or your firm) been the reporting accountants (or auditor) of the issuer?**

Response considerations      This question demands a factual answer.

**Question A2      Describe the nature and scope of your examination of the issuer's historical financial information included in the investment circular. Were any limitations imposed upon the scope of your examination by management of the issuer or others?**

Response considerations      The reporting accountants would make it clear that the examination covered only the historical financial information for the dates and periods referred to in the accountants' report.

The scope of an examination is set out in the accountants' report:

- An examination is conducted in accordance with [Hong Kong Standard on Investment Circular Reporting Engagements 200 (HKSIR 200)], which requires that the reporting accountants plan and perform the examination to obtain reasonable assurance whether the historical financial information is free of material misstatement.
- An examination includes examining, on a test basis, evidence supporting the amounts and disclosures in the historical financial information.
- An examination also includes assessing the accounting policies used and significant estimates made by management.

In the normal case, the scope of the examination would enable the reporting accountants to express an opinion without reservation on the historical financial information. If there was any limitation imposed on the scope of the examination, the matter would be dealt with in the accountants' report.

The reporting accountants might be willing to describe the examination procedures performed on certain financial information elements in forming an opinion on the historical financial information as a whole; however, the reporting accountants would make it clear that no assurance is provided on these specific items beyond that conveyed by the historical financial information.

**Question A3**      **Management has provided us with a list of pending litigation, commitments, contingent liabilities, guarantees, and any indebtedness or other off-balance sheet items (a list would be provided to the reporting accountants). In the course of your examination, did you discuss with management or otherwise identify any other items of the same type not included on this list that exceed (an amount provided by the sponsor)?**

Response considerations      The reporting accountants could reply that, based on the procedures performed, including discussions with management, no other items of the types mentioned were identified, or discuss any such items that were so identified. The reporting accountants may wish to point out that reporting accountants must rely to a large extent on management, and sometimes on legal counsel, in identifying outstanding contingencies.

If the reporting accountants wish to ensure that the sponsor understands the procedures reporting accountants apply to contingencies, commitments and other such items, the procedures that are performed in gathering evidence to determine whether any such contingent items require accrual or disclosure in the historical financial information could be outlined, such as:

- review of the issuer's written summary of known and threatened claims;
- discussion with management of contingencies, commitments, and other obligations;
- discussion with the issuer's general counsel of all litigation and threatened litigation of which the issuer is aware, including litigation and claims or threatened claims covered by insurance;
- search for unrecorded liabilities by a review of disbursements subsequent to period-end and open invoices;
- receipt of written confirmation of obligations from third parties such as banks and lenders;
- receipt of written representations from management;
- review of events which have occurred between the date of the historical financial information and the date of the accountants' report; and
- review of accounting treatment and disclosure in the historical financial information.

**Question A4**      **Management has informed us that it does not plan to change any of the significant accounting policies as set forth in note 1 to the historical financial information of the issuer. Has management informed you, or had any discussions with you, regarding any change in the accounting policies?**

Response considerations      The reporting accountants may properly respond to these questions. If the reporting accountants are aware of any recent or pending changes in accounting standards or regulatory requirements that would make a change in the issuer's accounting policies necessary or desirable in the future, attention would be drawn to such recommendations or requirements.

**Question A5**      **Management has informed us that it does not plan to have any material potential write-downs in the current year. Has management informed you, or had any discussions with you, regarding any potential write-downs in connection with the examination of historical financial information?**

Response considerations      Normally the reporting accountants can answer this question without difficulty. The reporting accountants may wish to convey to the sponsor that reporting accountants and management usually have an ongoing dialogue with respect to potential future issues, and may choose to identify some of the accounting matters on which discussions have taken place.

The reporting accountants may also wish to refer the sponsor to any measurement uncertainty disclosures in the historical financial information, in particular any disclosures regarding historical financial information items where there is a reasonable possibility that the recognized amount of the historical financial information item could change by a material amount in the near term.

**Question A6**      **Management has informed us that it is not aware of any facts that would give rise to any unusual items appearing in the issuer's historical financial information. Has management informed you, or had any discussions with you, regarding any such items?**

Response considerations      The reporting accountants can answer this question without difficulty. However, unusual items do not have a precise meaning in accounting terms. To avoid misunderstanding, it is therefore important that the sponsor define what is meant by "unusual" items.

**Question A7**      **How often do you meet with the issuer's audit committee or board of directors, and what are the procedures at and nature of such meetings?**

Response considerations      The reporting accountants would describe the frequency of meetings with the audit committee and, if applicable, the board of directors.

Meetings with the audit committee would generally encompass a review and approval by the committee of the reporting accountants' examination plan and discussion of accounting and financial presentation issues. The committee would generally meet to review the historical financial information and recommend its approval by the board of directors. The reporting accountants would indicate whether meetings of the committee were held at the request of the committee or the reporting accountants.

Meetings with the board are likely to be less common, and would generally be related to a special assignment undertaken by the reporting accountants, such as delivering a special report, or discussing financing alternatives.

**Question A8**      **Do you have full and open access to all materials which you consider necessary to enable you to perform your examination?**

Response considerations      It would be expected that the reporting accountants would have full and open access to all necessary materials.

**Question A9**      **Discuss your relationship with the issuer's management. Have you had any disagreements with management that have not been resolved to your satisfaction?**

Response considerations      Generally the reporting accountants would be in a position to state that management was cooperative, and provided all of the information and explanations that the reporting accountants required. The reporting accountants may choose to point out that in the course of normal communications with the issuer, the reporting accountants frequently meet with management to discuss emerging accounting issues, and have always been able to resolve the issues with senior management satisfactorily. Otherwise, the reporting accountants would have included a reservation in the accountants' report.

**Question A10**      **Have there been any significant weaknesses in internal control that you have identified during the course of your examination of the historical financial information that were communicated to the audit committee or management committee that, to the best of your knowledge, have not been acted upon by management?**

Response considerations      The reporting accountants would state whether or not significant weaknesses in internal control have been reported to the issuer, and might identify the areas of weakness. In the course of the engagement related to the investment circular, the reporting accountants will have updated knowledge of the internal controls, and may be in a position to comment on changes that have been effected since the time when the weaknesses were reported. However, the question of management's actions would properly be addressed to, and answered by, management. The reporting accountants are not normally in a position to comment

on the effectiveness of any action that has been taken by management to address the internal control weaknesses that have been reported.

In responding to this question, the reporting accountants may also wish to outline the limited nature of the review of internal controls in connection with the examination of the historical financial information, to ensure that there is no misunderstanding by the sponsor of the nature and extent of the reporting accountants' review of internal controls and the type of weakness that the reporting accountants would consider to be "significant".

**Question A11**      **Other than as disclosed in the investment circular, are you aware of any related party transactions involving the issuer that require disclosure in the historical financial information under HKFRSs?**

Response considerations      The reporting accountants will likely be able to answer this question in the negative, but should be concerned about any possible related party transactions subsequent to the most recent balance sheet date that would require financial statement disclosure in the track record period.

If the reporting accountants wish to be sure that the sponsor understands the procedures reporting accountants apply to identify significant related party transactions, the procedures applied may be outlined, such as the following:

- preparation of a list of directors, officers and related entities, to be consulted by audit staff when they are reviewing the issuer's transactions;
- receipt of written representations from management regarding related party transactions; and
- review of material contracts entered into during the track record period.

**Question A12**      **Please discuss the most significant areas of audit risk you have encountered in respect of the issuer and how you gained comfort in these areas.**

Response considerations      The reporting accountants might identify the most critical audit areas and issues discussed with the audit committee in the years and periods covered by the historical financial information. However, it is important that the reporting accountants explain that the assessment of audit risk is concerned with the fairness of presentation of the historical financial information in accordance with generally accepted accounting principles, and should not be taken to provide comfort on individual elements within the historical financial information, or on the absence of other significant business risks which, because of their nature, were not considered by the reporting accountants to constitute areas of significant audit risk.

**Question A13**      **Is there anything of which you are aware that would inhibit your delivery, in accordance with HKSIRs, and the terms of your engagement, of an unqualified report on the historical financial information, consent letters, and the comfort letter to the sponsor?**

Response considerations      The reporting accountants would be careful to explain any development (such as a delay in the issuer's providing necessary information, or an unresolved problem regarding disclosure in the investment circular) which might delay the completion of the reporting accountants' work.

**B. Questions to which the reporting accountants are unable to respond in the terms in which they are asked (B1-B5)**

The sponsor may ask questions to which the reporting accountants are unable to respond in the terms in which they are asked. In such circumstances, the reporting accountants may wish to respond by explaining the reasons why they are unable to provide the information requested. Some examples of these types of questions, together with a commentary on how the reporting accountants might respond to the question, are set out below.

**Question B1**      **Based on your reading of the prospectus, do you have any reason to believe that it is not fairly presented? (Or, Are you aware of any other matters that should be disclosed in the prospectus? Or, Are there any other questions that we should have asked in completing our due diligence investigation?)**

Response considerations      There is no accepted standard by which the reporting accountants can judge whether a prospectus is fairly presented. Professional standards require that the reporting accountants read the prospectus with a view to assessing the overall impression given by the document, having regard to the purposes for which it has been prepared, as well as considering whether there are any inconsistencies between their report and the information in the rest of the document.

These procedures would not necessarily disclose material misstatements or omissions in the information included in the investment circular. Accordingly, except for the historical financial information included in the prospectus, the reporting accountants are not in a position to make any representations as to completeness or adequacy of disclosures in the prospectus.

The sponsor applies many other considerations in forming an opinion as to what constitutes a fair presentation, but the reporting accountants have no way of knowing what would be of interest to the sponsor. As well, a great deal of the information in a prospectus (and, perhaps, significant omissions) is outside of the knowledge of the reporting accountants.

**Question B2**      **Are you aware of any matters that may directly or indirectly affect the value of the securities offered under the prospectus?**

Response considerations      The reporting accountants are not competent to express a view as to matters that may affect the value of securities. This subject is within the province of a securities dealer such as an underwriter.

**Question B3**      **Are provisions for losses (e.g., bad debts, inventory obsolescence) adequate?**

Response considerations      An examination is designed to assess the presentation of the historical financial information as a whole, and not to provide assurance on individual financial information items. The reporting accountants determine materiality by reference to the historical financial information taken as a whole. The only appropriate answer to the question is that the reporting accountants would not have given an opinion without reservation if in the reporting accountants' opinion the historical financial information did not give a true and fair view. The reporting accountants may be willing to describe the examination procedures performed in order to conclude on the adequacy of loss provisions in the context of the examination of the historical financial information as a whole.

**Question B4** **Are the accounting policies and methods used by the issuer appropriate? Please comment on the general fairness (adequacy) of the issuer's accounting policies and the presentation of its historical financial information. Are these accounting policies consistent with the majority of enterprises in the same business as the issuer? Would you describe the financial reporting policies of the issuer as conservative/liberal relative to other companies in the industry?**

Response considerations Assuming that the reporting accountants have expressed an opinion without reservation on the issuer's historical financial information, it would ordinarily be possible to confirm that the accounting policies and methods used by the issuer are appropriate.

The reporting accountants would advise the sponsor that management has the responsibility for the accurate recording of transactions and the preparation of historical financial information in accordance with generally accepted accounting principles. This responsibility includes the selection and application of accounting policies. An examination of the historical financial information does not relieve management of its responsibilities. The reporting accountants may make suggestions as to the form or content of the historical financial information, and ensure that the accounting principles and policies are in accordance with generally accepted accounting principles; however, the reporting accountants are not required to assess the preferability of an accounting principle or method when acceptable alternatives exist. The reporting accountants would also consider discussing the alternative accounting policies available under generally accepted accounting principles, generally, and in the issuer's industry.

From time to time, the reporting accountants may discuss with the audit committee the quality of various accounting policies, and express a view as to the relative merits of differing methods. The reporting accountants may wish to refer to these discussions. However, in dealing with a third party such as a sponsor, the reporting accountants would be very cautious about answering any question about the relative conservatism of the issuer's accounting policies, as any answer is likely to be based on the reporting accountants' personal experience, and not on any generally accepted criteria.

**Question B5** **What was the extent of your involvement in the preparation of the historical financial information and the other financial information in the investment circular?**

Response considerations The responsibility for the preparation of historical financial information, and also of investment circulars, rests with management of the entity. It is the reporting accountants' responsibility to perform an examination of the historical financial information prepared by management.

### **C. Questions properly addressed to management (C1-C3)**

The sponsor may ask questions that are properly addressed to management, rather than the reporting accountants.

**Question C1** **Is the historical financial information for the periods contained in the prospectus of the issuer accurate in all material respects?**

Response considerations The reporting accountants would remind the sponsor that the historical financial information is the responsibility of the issuer's management and that this question is best answered by management. The reporting accountants would explain that the responsibility as reporting accountants is to express an opinion on the historical financial information based on an examination. As noted in the accountants' report, it is the reporting accountants' opinion that the historical financial information included in the investment circular gives a true and fair view of the financial position of the company as at (dates) and the results of its operations and its cash flows for the years then ended.



**Question C2      What is the reason for the increase / decrease in (certain historical financial information items) in 20X5 as compared to 20X4?**

Response considerations      The reporting accountants' responsibility is to form an opinion as to whether the historical financial information gives a true and fair view. A change in the recorded amount of an asset, liability, revenue or expense item from period to period is normally the result of numerous transactions. Management has the responsibility of operating the business, has first-hand knowledge of these transactions, and is in a position to analyse changes. Therefore, any questions as to the reasons for a change in a historical financial information item would be addressed to management, and responded to by management. The reporting accountants could comment on management's response only if a separate assurance engagement was carried out on the matters in question.

**Question C3      Please provide us with an assessment (comment on the adequacy) of the Company's internal control systems. Are you satisfied that internal controls are in place to prepare adequate financial information? Have you relied upon internal controls in performing your examination?**

Response considerations      The reporting accountants would advise the sponsor that this question can only be answered by the issuer's management, because responsibility for ensuring the adequacy of internal control is part of the issuer's management's overall responsibility.

The reporting accountants may respond by stating that management's internal control objectives go beyond financial information objectives. Internal controls relevant to the examination comprise those policies and procedures established and maintained by management that relate to specific financial information assertions.

The reporting accountants would explain that the reporting accountants have a responsibility to obtain a sufficient understanding of internal control to plan the examination. This understanding includes knowledge about the design of policies and procedures and whether they have been implemented, but does not extend to evaluating the operating effectiveness of these policies and procedures. The reporting accountants only evaluate, and test, those internal controls on which it is planned to rely on during the examination. Accordingly, an opinion in an accountants' report provides no assurance as to the efficiency or effectiveness with which operations, including internal controls, have been conducted.

The reporting accountants may then wish to discuss the approach adopted in performing the examination including reliance on internal controls. The reporting accountants may also wish to point out that these controls would not normally include all of the controls over the preparation of the historical financial information; accordingly, the reporting accountants are not in a position to provide any assurance regarding such controls.

Notwithstanding this, the reporting accountants would consider informing the sponsor as to any significant weaknesses in the issuer's internal control structure which were reported to management.