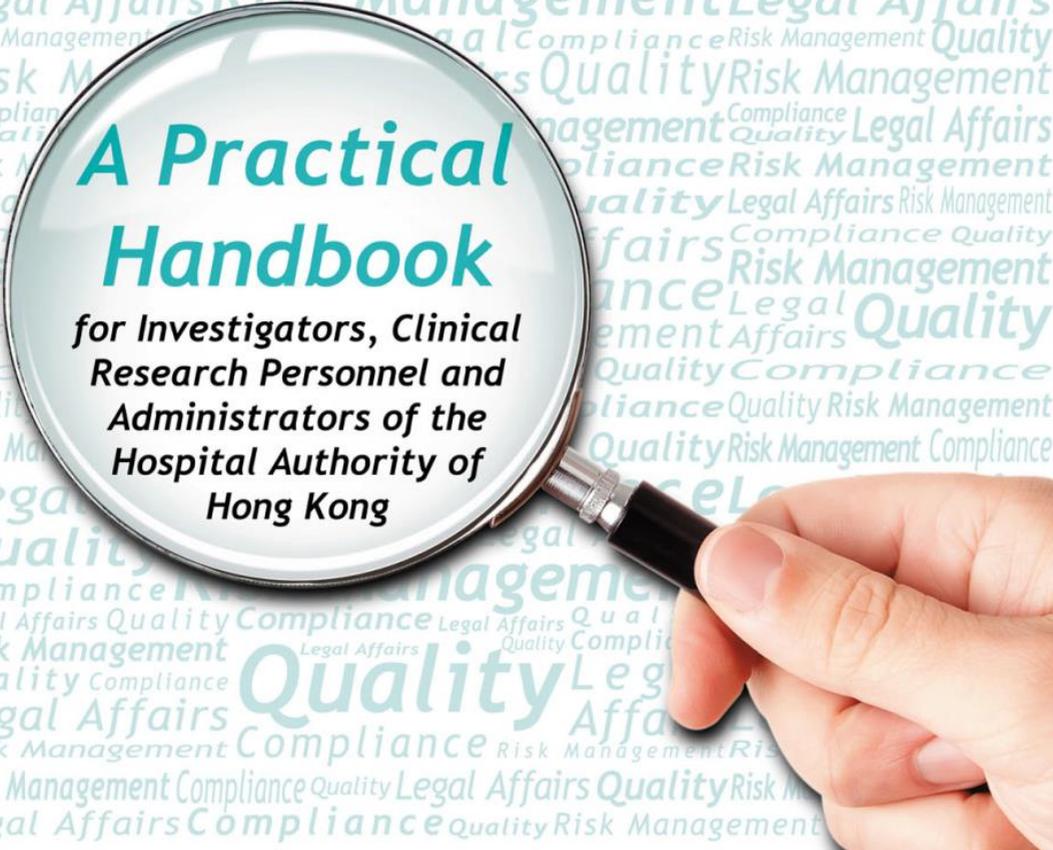




醫院管理局  
HOSPITAL  
AUTHORITY

# Clinical Research

Management and Compliance at Study Sites



## A Practical Handbook

for Investigators, Clinical  
Research Personnel and  
Administrators of the  
Hospital Authority of  
Hong Kong

# Clinical Research

## Management and Compliance at Study Sites

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*A Practical Handbook for Investigators, Clinical Research Personnel  
and Administrators of the Hong Kong Hospital Authority*

**Second Edition**

Hospital Authority Head Office Steering Committee on Research Ethics  
Hospital Authority

Clinical Research Management and Compliance at Study Sites

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# **Preface by Chief Executive**

Clinical research is a cornerstone of evidence-based medicine and an indispensable tool in building the infrastructure required for improving public health and the quality of medical services.

Being the major healthcare service provider in Hong Kong, the Hospital Authority (“HA”) has the responsibility to promote and facilitate the conduct of clinical studies. Our efforts to uphold this responsibility include assisting to set up the two Phase 1 Clinical Trial Centres in the two teaching hospitals and supporting the research oversight of around 1,500 clinical researches undertaken in the HA each year.

The publication of the first edition of this handbook in 2010 outlined the best practices in management and compliance in respect of clinical research in Hong Kong. Its comprehensive set of principles and guidelines not only support consistency in research techniques and practices, but also offer the Hong Kong community a high degree of assurance that the rights, safety, and well-being of research subjects are protected and respected throughout the research process. In addition, the hospital management and research stakeholders can also keep abreast of the updated information related to clinical research.

This second edition of the handbook includes a variety of updates that will ensure our staff and healthcare partners have access to the latest developments in clinical research theory and best practices. I am certain that this revised publication will lead to even higher standards of medical research and provide stronger support for our continuing efforts to safeguard and enhance the health of people in Hong Kong.

Dr P Y Leung  
Chief Executive  
May 2015



# **Preface by Chairperson, HA REC**

Clinical research is a branch of healthcare sciences that determines the safety and effectiveness of medications, devices, diagnostic products and treatment regimens intended for human use, and is of great value to medical institutions, medical practitioners, patients and the society as a whole. Good clinical research must be built upon sound ethical practice.

In Hong Kong, oversight of clinical research is assured through good governance and vigorous administrative control, both by academia and health care providers. In view of growing clinical research activities in HA hospitals and invariable involvement of HA patients in clinical trials, HA (including the two teaching hospitals) and the two medical faculties had set out the common goal to modernize the research governance structure in 2001.

By end of 2002, HA Head Office Steering Committee on Research Ethics (“HA REC”) worked with and the six Cluster Research Ethics Committees (“CRECs”) to agree on the common standards and procedural requirements for CRECs taking reference to the ethical principles as elaborated by the international standards and guidelines on research ethics.

To strengthen the clinical research ethics infrastructure, HA REC had established and revised the HA Guide on Research Ethics in 2003 and 2007 respectively by enhancing the study sites’ responsibilities and standardizing the administrative approval procedures for clinical research.

In 2010, HA REC had taken one step forward and issued the first edition of this handbook for investigators, research personnel and administrators on the practical aspects of management and regulatory compliance for clinical research conducted in HA.

Similar to the first edition, this edition covers the updated information with respect to the development on policies, guidelines and international standards regarding clinical research. I trust the publication of this second edition of the handbook will continue to help assure the ethical standard and maximize the benefits of clinical research in HA.

Dr Derek Au  
Chairperson, HA REC  
May 2015

**Part 1:**  
**Introduction**



# 1. Scope and Applicability

## 1.1 Definition of Clinical Study

1.1.1 A clinical study is any systematic investigation in any medical or scientific discipline with the objective of answering question(s) that may contribute to establishment of theory(ies), principle(s) or generalizable knowledge by processing, analyzing and reporting of information collected from:

- (a) Human beings (e.g. randomized controlled trial on a medical product or clinical procedure/method);
- (b) Identifiable human materials (e.g. genetic analysis of archived human specimens); and/or
- (c) Identifiable human data (e.g. medical chart review and case series).

1.1.2 Common objectives of clinical studies include investigation of the causes, development, progress and/or effects of diseases or medical conditions, and discovery or verification of the efficacy, safety and/or cost-effectiveness of medical products, procedures or methods (whether for diagnosis, prophylaxis or therapy).

1.1.3 Medical products may include:

- (a) Drugs (e.g. chemical drugs, biological drugs and vaccines);
- (b) Medical devices (e.g. implants, diagnostic kits and imaging machines);
- (c) Chinese/herbal medicines (e.g. proprietary/traditional Chinese medicines);
- (d) Health/nutritional supplements (e.g. health foods);

## Introduction

- (e) Cell therapies (e.g. stem cells); and
- (f) Gene therapies (e.g. viral vectors).

### 1.1.4 Clinical procedures and methods may include:

- (a) Clinical examinations/assessments (e.g. venipuncture);
- (b) Surgical procedures (e.g. tumor resection);
- (c) Nursing procedures (e.g. vital signs taking);
- (d) Physiotherapies (e.g. rehabilitation exercises);
- (e) Occupational therapies;
- (f) Psychotherapies (e.g. hypnotherapy);
- (g) Behavioral therapies;
- (h) Alternative therapies (e.g. acupuncture); and
- (i) Diagnostic imaging (e.g. X-ray examinations).

### 1.1.5 The terms “clinical research,” “clinical study” and “clinical trial” are often used interchangeably in a broad sense.

## **1.2 Value of Clinical Studies**

1.2.1 Clinical studies not only help us understand more about human diseases or medical conditions, but more importantly represent the final and the most important step in the development of novel therapies, prophylaxes and diagnostics, bringing new medical products, procedures and methods from laboratories to the bedside.

1.2.2 Clinical studies could bring along the following important benefits to medical institutions and medical professionals, as well as to patients and the society:

- (a) Benefits to patients and the society: Clinical studies may benefit individual patients by providing access to new or modified medical products, procedures or methods, and the

- entire society through successful development or modification of medical products, procedures or methods.
- (b) Benefits to medical professionals: Clinical studies offer medical professionals the opportunities to learn and to practice clinical research, advancing their knowledge in the latest medical technologies and creating the culture of research and development of new technologies and services.
  - (c) Benefits to medical institutions and the healthcare system: Clinical studies improve understanding of the causes, development, progress and effects of diseases or medical conditions, contributing to the improvement in the cost-effectiveness of therapies, prophylaxes and diagnoses and enhancing the efficiency and effectiveness of medical institutions and the whole healthcare system.

### **1.3 Scope and Applicability of this Handbook**

- 1.3.1 This handbook outlines the major management and compliance issues in respect of clinical studies undertaken by the Hospital Authority (“HA”) and its employees, officers and appointees under the employment or appointment of the HA. The main contents include:
  - (a) Compliance requirements;
  - (b) Legal affairs; and
  - (c) Risk and quality management.
- 1.3.2 This handbook is developed and published as a reference material for HA personnel involved in overseeing, conducting, coordinating, facilitating and/or supporting clinical studies. The target readers include:
  - (a) Investigators (e.g. medical doctors and Chinese medicine

## Introduction

- practitioners);
  - (b) Clinical research coordinators (e.g. nurses and research assistants);
  - (c) Clinical and allied health professionals (e.g. pharmacists, laboratory technologists/technicians and radiographers);
  - (d) Management personnel and administrators (e.g. Hospital Chief Executives, Chiefs of Service, department managers and hospital administrators); and
  - (e) Members of research ethics committees (“RECs”) and staff of REC secretariats.
- 1.3.3 This handbook is not an official policy document. In case of doubt or controversy, readers should refer to the HA’s prevailing official policies, guidelines and requirements.
- 1.3.4 The HA is in close collaboration with the medical faculties of The University of Hong Kong (“HKU”) and The Chinese University of Hong Kong (“CUHK”) – especially through the two teaching hospitals (i.e. Queen Mary Hospital and Prince of Wales Hospital) – in education, research, and advancement of healthcare technologies and services. Without prejudice to the HA’s applicable policies, guidelines and requirements, management and administration of clinical studies undertaken by or under the two universities shall be subject to their respective policies, guidelines and requirements.

## **2. Classification of Clinical Studies**

### **2.1 Management Classification of Clinical Studies**

2.1.1 Clinical studies could be classified from various perspectives. Common ways include classification by study phases (e.g. phase 1, 2, 3 and 4), by therapeutic areas (e.g. cardiology, endocrinology and oncology), by study articles (e.g. chemical drugs, biological drugs, herbal medicines and medical devices) and by study designs (e.g. double-blind, randomized controlled studies and open-label studies).

2.1.2 For the purpose of management and administration, clinical studies may be classified as:

- (a) Interventional studies or non-interventional studies; or
- (b) Sponsored studies or investigator/institution-initiated studies.

### **2.2 Interventional and Non-interventional Studies**

2.2.1 An intervention is any medical product, procedure or method applied to humans and is intended to treat, mitigate, diagnose or prevent a disease or medical condition.

2.2.2 An interventional study is a clinical study that involves any extra medical intervention that is not part of the routine or standard medical care for the human subjects involved. Such medical interventions may include:

- (a) The use of any investigational medical product or off-label

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use of any marketed medical product;

- (b) Performance of any extra clinical procedure or method; and
- (c) Study-specific assignment of human subjects to study arms (e.g. randomization).

2.2.3 A non-interventional study is a clinical study that involves no extra medical intervention or only minor medical intervention(s) with insignificant extra risk to the human subjects involved. Common non-interventional studies include (but not limited to):

- (a) Surveys or epidemiology studies: Studies that involve only the collection of data and/or information from human subjects but not the use of any medical product, procedure or method (e.g. questionnaire surveys, medical chart reviews and case series studies);
- (b) Observational studies: Studies that involve the use of medical product(s), procedure(s) and/or method(s) without deviating from the normal clinical practices applicable to the human subjects involved, or to the furthest extent involve only noninvasive procedure(s) and/or method(s) with insignificant extra risk (e.g. observation of patients under their normal treatment courses, during which a few extra small blood samples are collected from each patient); and
- (c) Medical product studies: Studies that involve investigation of any medical product, where (i) such medical product(s) has/have been officially approved or permitted for clinical use; (ii) such medical product(s) is/are prescribed according to the labeled indications and instructions; (iii) assignment of any human subject to any treatment or healthcare strategy is determined in accordance with the normal clinical practices but not by randomization or other research specific methods; and (iv) no extra clinical procedure or

method other than noninvasive procedure(s) and/or method(s) of insignificant extra risk is involved (e.g. phase 4, single-arm drug trials).

- 2.2.4 Interventional studies are usually of higher risk comparing with non-interventional studies and are therefore subject to more stringent ethical, regulatory and management requirements.

### **2.3 Sponsored and Investigator/Institution-initiated Studies**

- 2.3.1 In the domain of clinical research, “sponsor” refers to any company, organization, institution or individual, whether for-profit or non-profit, that is responsible for initiating, managing and/or financing a clinical study. The meaning of “sponsor” extends beyond somebody who simply provides financial sponsorship. It embodies a broad range of primary responsibilities, which usually include:

- (a) Scientific responsibilities: Developing and manufacturing an investigational product and designing a clinical study;
- (b) Management responsibilities: Overall management of a clinical study – from study protocol development and identification of investigators to quality management and data analysis and reporting;
- (c) Regulatory responsibilities: Ensuring compliance with applicable laws and regulatory requirements;
- (d) Legal responsibilities: Assuming the liabilities to human subjects and investigators for damages arising from a clinical study; and
- (e) Financial responsibilities: Financing the costs of running a clinical study.

## Introduction

- 2.3.2 A sponsored study is a clinical study sponsored by an external party who is taking all or a large majority of the primary responsibilities outlined in section 2.3.1 above. In a sponsored study, a medical institution and its investigators only assume the role of research institution/investigator and are responsible for running the study at the study site. The sponsors, in return for the primary responsibilities taken, usually have full ownership over all the data, results and intellectual property rights derived from the studies. Clinical studies sponsored by commercial organizations (e.g. pharmaceutical, medical device and other healthcare companies) are commonly known as “industry-sponsored studies,” “company-sponsored studies” or “commercially-sponsored studies.”
- 2.3.3 An investigator/institution-initiated study is a clinical study initiated and managed primarily by a medical institution and/or its investigators. Without an external sponsor, the medical institution/investigators shall take all the aforesaid primary responsibilities and therefore assume the roles of both sponsor and research institution/investigator. In this regard, an investigator for an investigator-initiated study is also referred to as a “sponsor-investigator.” Investigator/institution-initiated studies are also commonly called “investigator/institution-sponsored studies” or “non-commercially sponsored studies.”
- 2.3.4 An investigator/institution-initiated study may be organized either entirely by a medical institution and/or its investigators or with the support of one or more external organizations in the forms of funding, medical products, equipment, research services or otherwise. It is important to emphasize that responsibility, rather than the funding source, is the major criterion for differentiating investigator/institution-initiated studies from sponsored studies.

# **Part 2:**

# **Compliance**



# 3. Overview of Clinical Research Compliance

## 3.1 Three Bases for Regulating Clinical Research

3.1.1 Clinical research is a special kind of scientific experiment involving human beings. Through the collection of human data, it aims mainly at evaluating the safety and/or efficacy of medical products, procedures or methods, as well as enhancing the understanding of diseases or medical conditions. Owing to its special nature, clinical research is heavily regulated worldwide for the following three key purposes:

- (a) Protection of human subjects: Human research ethics is a core consideration in contemporary clinical research. Sponsors, investigators, clinical research personnel, research institutions and other parties participating in organizing and/or conducting clinical research are strictly required to take all necessary measures to safeguard the rights, safety and well-being of human subjects.
- (b) Validation of scientific soundness: Clinical research is an important component of evidence-based medicine. Clinical studies must be well-designed, with valid scientific basis, to allow scientific evaluation (e.g. evaluation of the safety and/or efficacy of medical products, procedures or methods for consideration for clinical use by medical professionals or the grant of marketing authorizations by regulatory authorities) and to avoid putting human subjects on unjustified risks and wastage of limited research resources.
- (c) Assurance of data integrity: Scientific evaluation could not

be concluded without considering the quality and reliability of the data collected from clinical studies. Quality assurance systems must be established and quality control measures must be implemented to ensure data integrity and allow verification of study data wherever required.

### **3.2 Six-dimensional Compliance by Investigators**

3.2.1 Compliance is the act of conforming to certain established policies, regulations, rules, requirements, guidelines or standards. Investigators, being the key persons assuming the primary responsibilities to supervise and conduct clinical studies at their study sites, have to ensure compliance in six dimensions including:

- (a) International guidelines;
- (b) Management policies;
- (c) Research ethics committees' requirements;
- (d) Regulatory requirements;
- (e) Public registration requirements; and
- (f) Contractual requirements.

3.2.2 Different kinds of clinical studies (e.g. interventional and non-interventional studies, sponsored and investigator/institution-initiated studies) are subject to different sets of compliance requirements. The requirements in each of the aforesaid dimensions are to be elaborated in the subsequent chapters.

## **4. Compliance with International Guidelines**

### **4.1 International Guidelines for Clinical Research**

4.1.1 The rapid advances in medical research and development over the last century has led to globalization of clinical research activities, which triggered the call for harmonization of ethical, regulatory and technical requirements for clinical research.

4.1.2 Established in 1947 (two years after the Second World War), the Nuremberg Code was the first important ethical document which emphasized the rights and safety of human subjects, including voluntary consent and avoidance of unnecessary injury or suffering. Whilst over the years various bodies tried to establish different guidelines for clinical research, the two most internationally recognized and prevailing guidelines, among all others, may still be:

- (a) The Declaration of Helsinki; and
- (b) The International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use – Guideline for Good Clinical Practice (“ICH GCP”).

4.1.3 Although these guidelines are neither laws nor regulations that are legally binding, over the years they have gained wide acceptance by the industry and clinical research professionals, and are generally regarded as the gold standards for clinical research, especially for international clinical studies.

Investigators and clinical research personnel are usually required to follow such guidelines in organizing and conducting clinical studies.

### **4.2 Declaration of Helsinki**

- 4.2.1 The Declaration of Helsinki is probably one of the best-known policy statements issued by the World Medical Association (“WMA”), an international organization founded in 1947 by physicians from 27 countries and now representing over 100 national medical associations worldwide. First adopted in 1964 – 16 years after establishment of the Nuremberg Code – the Declaration of Helsinki provided a set of key ethical principles guiding the conduct of medical research involving human subjects. It has subsequently been amended in 1975, 1983, 1989, 1996, 2000, 2002, 2004, 2008 and 2013. The latest version could be obtained from the WMA homepage at [www.wma.net](http://www.wma.net).
- 4.2.2 Although the WMA only regards the latest version as the official version, individual institutions, RECs and sponsors may opt to use and follow the previous versions. Investigators should observe the most updated requirements of their affiliated institutions and RECs, and also the requirements of the relevant sponsors in case of participation in sponsored studies.
- 4.2.3 Owing to its comprehensiveness and broad representation, for decades the Declaration of Helsinki has been regarded and respected as the fundamental ethical standard for clinical research worldwide. Its underlying principles have also been embodied in subsequent international guidelines or regulations such as the ICH GCP (see section 4.3 below) and the U.S. Food and Drug Administration (“U.S. FDA”) regulations.

- 4.2.4 Notwithstanding its recognized status, a few points incorporated into version 2000 and onward (e.g. the use of placebo and post-study access to beneficial interventions) triggered big and continuous controversy among various clinical research players.
- 4.2.5 In October 2008, the U.S. FDA removed the reference to the Declaration of Helsinki from its regulations and instead incorporated the standard of good clinical practice (“GCP”). The primary reason for the change, according to the U.S. FDA, is to eliminate any potential confusion resulting from different revisions of the Declaration of Helsinki, which is independent and beyond the control of the U.S. government. The U.S. is the world’s biggest pharmaceutical and healthcare market and the U.S. FDA is among the most influential regulatory bodies worldwide. The aforesaid change by the U.S. FDA has unavoidably hampered the status of the Declaration of Helsinki.

### **4.3 ICH Guideline for Good Clinical Practice**

- 4.3.1 GCP is a standard for the design, conduct, performance, monitoring, auditing, recording, analysis and reporting of clinical studies, which provides assurance of the credibility and accuracy of clinical study data and results and the protection of the rights, safety, well-being, integrity and confidentiality of human subjects.
- 4.3.2 The International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use (“ICH”) is a unique project that brings together the regulatory authorities and pharmaceutical industry experts from the U.S., Europe and Japan to discuss the scientific and technical aspects of pharmaceutical research and development, with the purposes of harmonizing the requirements for pharmaceutical product registration, avoiding or reducing

## Compliance

duplicated clinical trials, and accelerating the availability of new medicines that benefit the public.

- 4.3.3 The ICH GCP was adopted in 1996 and consists of eight chapters, covering the basic principles of GCP, the responsibilities of RECs, investigators and sponsors, the key components of clinical study protocols and investigator's brochures, and a summary of the essential documents for clinical studies. Since it was assigned as the sixth guideline under the category of "Efficacy," ICH GCP is also called ICH E6 guideline. A complete version could be obtained from the ICH homepage at [www.ich.org](http://www.ich.org).
- 4.3.4 The ICH GCP is nowadays generally regarded as the international GCP standard applicable to clinical studies of pharmaceuticals and, to various extents, other medical research involving human subjects. It also forms the basis of the clinical research regulations in the ICH regions (i.e. the U.S., Europe and Japan) and the large majority of countries and regions worldwide.
- 4.3.5 Replacement of the reference to the Declaration of Helsinki by GCP (as outlined in section 4.2.5 above) in the U.S. FDA regulations has made the ICH GCP being seen as a more important guideline in the international clinical research industry.

## **5. Compliance with Management Policies**

### **5.1 HA as a Research Institution**

5.1.1 The HA is a statutory body established under the Hospital Authority Ordinance (Chapter 113 of the Laws of Hong Kong) in 1990. In addition to the primary responsibilities of establishing, managing, controlling and developing the public hospital system in Hong Kong and advising the Hong Kong government on healthcare policies and strategies, the HA also has the responsibility to promote, assist and take part in research relating to hospital services (Chapter 113, Section 4(f)(ii) of the Laws of Hong Kong).

5.1.2 Being a public healthcare provider and a research institution, the HA, according to the Hospital Authority Guide on Research Ethics for Study Site & Research Ethics Committee (revision number 1, dated August 15, 2007), has to take into consideration the following principles while promoting, assisting or taking part in clinical research:

- (a) Services are accorded priority.
- (b) The rights, safety and welfare of human subjects are properly protected.
- (c) Clinical studies are conducted ethically and lawfully.
- (d) Public confidence is sustained by an environment that upholds scientific and ethical integrity.
- (e) Liabilities to the HA are minimized.

## **5.2 Governance of Clinical Research in the HA**

5.2.1 To serve the role of a research institution, the HA has established a two-tier structure for governance of clinical research, including:

- (a) Research management governance by cluster/institution management; and
- (b) Research ethics governance by RECs.

5.2.2 The HA is a large healthcare institution managing (as of December 2014) 42 public hospitals/institutions, 47 specialist outpatient clinics and 73 general outpatient clinics (for simplicity, HA hospitals, institutions and clinics are hereinafter referred to individually as an “institution” and jointly as “institutions”). In order to ensure that clinical research is managed in an effective and efficient manner, the HA has delegated its clinical research management governance responsibilities to different management levels within the HA management system, including:

- (a) Cluster/institution management, represented by Cluster Chief Executives (“CCEs”) and Hospital Chief Executives (“HCEs”), or their delegates; and
- (b) Departmental management, represented by Chiefs of Service (“COSs”) or their delegates.

5.2.3 Any clinical study undertaken by any HA institution and/or its employees, officers and appointees under the HA’s employment/appointment is subject to initial management approval and continuous review and supervision by the management of the institution at where the study site is located. The relevant cluster/institution management and departmental

management shall have the joint responsibility to ensure that:

- (a) Service priority of the institution will not be adversely affected by the study;
- (b) The investigators and research team are competent to organize and conduct the study;
- (c) Sufficient and suitable resources, manpower and facilities will be available for supporting the conduct of the study in a safe and proper manner;
- (d) Qualified personnel, whether the investigators, research team members or other appropriate personnel, are available and prepared to manage any adverse medical condition that may arise from the study; and
- (e) Where external party(ies) is/are involved (e.g. in a sponsored study) and legal agreement(s) between such external party(ies) and the institution is/are required, such agreement(s) has/have been reviewed by the HA Legal Services Department (“HALSD”) prior to execution by the institution’s authorized representative(s).

5.2.4 The REC system is an added governance layer established by the HA for protection for human subjects participating in clinical research. Its structure and operations are to be outlined in the next chapter.

### **5.3 Governance by Cluster/Institution Management**

5.3.1 Cluster/institution management is the official representative of the institution involved, and is responsible for overseeing the resources management and risk management aspects of clinical studies on cluster/institution level.

5.3.2 Any official document issued in relation to a study under the capacity of a cluster/institution, including but not limited to

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legal agreements (e.g. clinical trial agreements and indemnity agreements for sponsored studies), shall be endorsed/signed by the cluster/institution management.

- 5.3.3 Cluster/institution management also has the responsibility to deal with any complaint or claim received in relation to any clinical study. If circumstances warrant, the cluster/institution management may refer such complaints or claims to the HA Head Office (“HAHO”).

### **5.4 Governance by Departmental Management**

- 5.4.1 Departmental management is responsible for overseeing the clinical management, resources management and risk management aspects of clinical studies at departmental level.
- 5.4.2 Prior to submission of a study’s clinical research ethics review application dossier (the list of major documents that need to be included in the dossier will be set out in the next chapter) by the study’s investigator to the relevant REC, the relevant departmental management shall review the dossier in order to verify that the criteria set out in section 5.2.3 above are properly conformed to. Signing of the dossier by the departmental management shall be deemed a valid and sufficient departmental management approval for the study.
- 5.4.3 If deemed required, the departmental management may discuss with the investigator to clarify any study particulars and, wherever necessary, to request for modifications of the study, its documents and/or arrangements to secure conformance to the said criteria.
- 5.4.4 In the circumstances the departmental management believes, after reasonable evaluation, that the study may bring about

extraordinary risk to human subjects, the investigators/research team, the institution and/or the HA, the departmental management shall consult with the cluster/institution management.

- 5.4.5 Management oversight is an ongoing process. Departmental management shall keep reviewing the status of each clinical study to safeguard continuous compliance with the aforesaid criteria.
- 5.4.6 Departmental management also has the responsibility to perform initial evaluation of any complaint or claim received in relation to any clinical study and, wherever circumstances warrant, to refer such complaint or claim to cluster/institution management for further handling.

## **5.5 Investigator Accountability to Management**

- 5.5.1 An investigator is the key person supervising the conduct of a clinical study at a study site and shall assume the final responsibility of ensuring compliance with all applicable management policies by himself/herself and also by his/her whole research team, including (but not limited to):
  - (a) Submitting the study's clinical research ethics application dossier to and seeking an approval for the study from the departmental management as described in section 5.4.2 above;
  - (b) Submitting any agreement (e.g. clinical trial agreement and indemnity agreement for sponsored studies) and official document to and seeking an endorsement from the cluster/institution management as described in section 5.3.2 above;
  - (c) Updating the departmental management on the study status

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during the study period as described in section 5.4.5 above;  
and

- (d) Informing the departmental management of any complaint or claim in relation to the study as described in section 5.4.6 above.

5.5.2 Notwithstanding the above, other research personnel, by agreeing to take part in conducting the study, shall have the responsibility to observe and help the investigator comply with all relevant management policies.

5.5.3 If a study is conducted by a team of investigators at a study site, one of the investigators shall take the leading role and assume the final responsibility at the study site, and that leading investigator is commonly named a “principal investigator.”

### **5.6 Approval by Collaborators**

5.6.1 If a clinical study is conducted in collaboration with investigators at other hospitals/institutions outside the HA, the HA investigator shall make sure that the collaborating investigators will obtain proper management approvals by the collaborating hospitals/institutions before study initiation and will continuously comply with the requirements of the collaborating hospitals/institutions.

## **6. Compliance with Research Ethics Committee Requirements**

### **6.1 Research Ethics Committee System in the HA**

6.1.1 Human research ethics is a core consideration in contemporary clinical research. RECs have become a fundamental and essential infrastructure responsible for overseeing clinical research ethics and safeguarding the rights, safety and well-being of human subjects.

6.1.2 In the HA, its REC system is organized at two levels including:

- (a) The HAHO Level: HAHO Steering Committee on Research Ethics (“HAREC”); and
- (b) The Cluster Level: Cluster Research Ethics Committees (“CRECs”).

6.1.3 The HAREC is responsible for steering the development of research governance in the HA, aligning research ethics standards and practices within the HA and with affiliating academia, monitoring and auditing research governance in the HA, and handling appeals against CRECs’ review procedures.

6.1.4 Each CREC is responsible for initial and continuing ethics and scientific review and oversight of clinical studies:

- (a) Undertaken by its institutions and/or personnel (e.g. employees, appointees and students);
- (b) Conducted wholly or partially in its institutions; and/or
- (c) Involving its patients and/or personnel (e.g. employees,

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appointees and students) as human subjects.

6.1.5 A CREC has the major powers to:

- (a) Request for, collect and review information, documents and materials necessary for performance of ethics and scientific review and oversight;
- (b) Recommend modifications to study designs and arrangements on sound ethical or scientific basis;
- (c) Approve or disapprove clinical studies and give other opinions on the ethical and scientific aspects of such clinical studies;
- (d) Suspend or terminate any approved clinical study if unacceptable risk to subjects arises;
- (e) Audit clinical studies to assess compliance with study protocols, the CREC's requirements and other applicable standards and requirements; and
- (f) Disclose study information to the cluster/institution management, the HA and the affiliated university (if applicable).

6.1.6 There are six CRECs overseeing clinical studies in seven HA clusters (Table 6.1). The HKU/HA HKW IRB and the Joint CUHK-NTEC CREC were established and are being operated jointly with HKU and CUHK respectively.

6.1.7 According to U.S. regulations, any organization that wishes to be involved in any clinical study funded by the U.S. federal government or any U.S. governmental agencies (e.g. the U.S. National Institutes of Health ("U.S. NIH")) must use REC(s) registered with the U.S. Office for Human Research Protections ("U.S. OHRP") for review and oversight of its clinical studies. For this purpose, all the six CRECs have registered with the U.S.

OHRP and their registration numbers are listed in Table 6.1.

**Table 6.1:** HA CRECs

<b>REC Name</b>	<b>Abbreviation</b>	<b>Jurisdiction</b>	<b>U.S. OHRP Registration No.</b>
Hong Kong East Cluster Research Ethics Committee	HKE CREC	• HA Hong Kong East Cluster	IRB00006847
Institutional Review Board of The University of Hong Kong / Hospital Authority Hong Kong West Cluster (6 Panels)	HKU/HA HKW IRB	• HKU	IRB00005123
		• HA Hong Kong West Cluster	IRB00005124
			IRB00005125
			IRB00005126
			IRB00005127
		IRB00005128	
Kowloon Central / Kowloon East Cluster Research Ethics Committee (3 Panels)	KC/KE CREC	• HA Kowloon Central Cluster	IRB00005035
		• HA Kowloon East Cluster	IRB00005036 IRB00005037
Kowloon West Cluster Research Ethics Committee	KW CREC	• HA Kowloon West Cluster	IRB00004640
Joint Chinese University of Hong Kong – New Territories East Cluster Clinical Research Ethics Committee	Joint CUHK-NTEC CREC	• CUHK	IRB00002883
		• HA New Territories East Cluster	
New Territories West Cluster Research Ethics Committee	NTW CREC	• HA New Territories West Cluster	IRB00004753

## **6.2 Initial Ethics Review Applications**

6.2.1 Each clinical study must first be approved by a CREC before being initiated at a study site. An application for ethics review

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shall be submitted to a relevant CREC secretariat and shall contain (but not limited to) the following items:

- (a) A submission letter for initial review
- (b) A duly completed and signed clinical research ethics review application form
- (c) An investigator's conflict of interest declaration form
- (d) Curricula vitae of the principal investigator (and key study personnel as required by a CREC)
- (e) A clinical study categorization form (as referred to in section 6.3.2)
- (f) A study protocol
- (g) An investigator's brochure (if available)
- (h) An informed consent form and/or a subject information sheet in suitable language(s)
- (i) Subject recruitment materials (e.g. subject recruitment advertisement or poster)
- (j) Documents/materials for use by subjects (e.g. subject-administered questionnaire)
- (k) A clinical trial insurance certificate (if applicable)

6.2.2 For any sponsored clinical study, the following additional items shall also be submitted:

- (a) A letter of indemnity for clinical trial
- (b) A draft clinical trial agreement (if any HA institution is a party to the agreement)
- (c) A cheque for the research ethics review application fee

6.2.3 The following aspects in respect of research ethics review applications shall be noted:

- (a) Each CREC may have different ethics review application

requirements. An investigator shall check with the relevant CREC secretariat for the detailed requirements.

- (b) An application must be submitted before the submission deadline for the corresponding review meeting. An investigator shall check with the relevant CREC for the exact meeting schedule and submission deadline for a particular review meeting.
- (c) An investigator may be required to attend an ethics review meeting to present the key study information and to answer inquiries by the review panel.
- (d) For each clinical study on any pharmaceutical product, a Certificate for Clinical Trial needs to be obtained through the Hong Kong Department of Health and submitted to the relevant CREC before the study is initiated. Details about the application will be provided in the next chapter.

### **6.3 Categorization of Clinical Studies**

6.3.1 The CRECs adopt a risk categorization approach by categorizing clinical studies based on six groups of risk factors including:

- (a) Involvement of human subject recruitment;
- (b) Subject vulnerability;
- (c) Subject assignment methods;
- (d) Involvement of medical products;
- (e) Involvement of clinical procedures; and
- (f) Study design.

6.3.2 A principal investigator shall complete a clinical study categorization form and submit it, together with the initial ethics review application, to the relevant CREC secretariat that will assess the risk and arrange for initial ethics review of the study through one of the following review channels:

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- (a) Channel A: Full review by a standard review panel (“Standard Panel”)
- (b) Channel B: Expedited review by an expedited review panel (“Expedited Panel”)
- (c) Channel C: Full review by a phase 1 clinical trials review panel (“Phase 1 Panel”), for clusters that are involved in phase 1 clinical trials

### **6.4 Initial Research Ethics and Scientific Review**

- 6.4.1 An application assigned for review through Channel A will be reviewed by at least five reviewers of the Standard Panel by meeting.
- 6.4.2 An application assigned for review through Channel B will be reviewed by one to three reviewers of the Expedited Panel, as determined by the CREC, through an expedited reviewed mechanism.
- 6.4.3 For an application for a phase 1 clinical trial as determined by the CREC in accordance with its standard operating procedure and assigned for review through Channel C, the ethical aspects of the trial will be reviewed by at least five reviewers of the Phase 1 Panel and the scientific aspects will be reviewed by at least three scientific reviewers from an independent joint scientific committee (“JSC”).

### **6.5 Reporting of Serious Adverse Events**

- 6.5.1 A serious adverse event (“SAE”) is an adverse event observed during a clinical study, which:
  - (a) Results in death;
  - (b) Is life-threatening;

- (c) Requires inpatient hospitalization or prolongation of existing hospitalization;
- (d) Results in persistent or significant disability or incapacity;
- (e) Results in a congenital anomaly or birth defect; or
- (f) In the professional medical judgment of an investigator, may seriously jeopardize a subject's health or may require medical intervention to prevent any of the events listed in (a) to (e) above.

6.5.2 All unexpected SAEs shall be reported to the CRECs promptly. Other SAEs may be reported in accordance with the standard operating procedures of individual CRECs. Investigators shall note and comply with the reporting requirements and timelines stipulated by the relevant CRECs.

6.5.3 Acknowledgements or notices from the relevant CRECs for any SAE reports shall be retained properly by investigators and (if applicable and required) copied to the relevant sponsors or supporting organizations.

## **6.6 Progress Reports and Final Reports**

6.6.1 Investigators shall update the relevant CRECs on the status of their clinical studies through submission of progress reports (at least annually during the period of a study or more frequently if so required by a relevant CREC) and a final report (at the end of a study).

6.6.2 Approvals from the relevant CRECs for any progress or final reports shall be retained properly by investigators and (if applicable and required) copied to the relevant sponsors or supporting organizations.

## **6.7 Ethics Compliance by Investigators**

- 6.7.1 Investigators shall be responsible for observing, understanding and complying with the latest requirements of the relevant CRECs, including (but not limited to) making required submissions and obtaining corresponding approvals or acknowledgements.

# 7. Compliance with Regulatory Requirements

## 7.1 Regulation of Clinical Research in Hong Kong

7.1.1 In Hong Kong, there is no legislation regulating all kinds of clinical research in general. Clinical trials on the following types of medical products are however respectively regulated under the product-related laws and regulations:

- (a) Pharmaceutical products (as defined in section 7.2.1 below)
- (b) Proprietary Chinese medicines (“PCM”) (as defined in section 7.4.1 below)

7.1.2 Clinical trials on medical products, procedures or methods other than those specified in section 7.1.1 above (e.g. studies on surgical procedures and medical devices) and other kinds of studies on human subjects (e.g. epidemiology and observational studies) are currently not legally regulated in Hong Kong. Investigators and clinical study personnel, however, need to observe the latest requirements and ensure that their clinical studies are conducted in full compliance with all prevailing local laws and regulations.

7.1.3 Notwithstanding the above, the Code of Professional Conduct promulgated by the Medical Council of Hong Kong does set out some general principles governing the conduct of clinical research. Registered medical practitioners breaching such principles may be subject to disciplinary proceedings by the Medical Council for professional misconduct. Other clinical

research personnel are also advised to observe and follow those principles.

## **7.2 Regulation of Clinical Trials on Pharmaceutical Products**

7.2.1 Clinical trials on pharmaceutical products are regulated in Hong Kong under the Pharmacy and Poisons Regulations (Chapter 138A Regulation 36B of the Laws of Hong Kong). Under the regulation, a “pharmaceutical product” means any substance or mixture of substances manufactured, sold, supplied or offered for sale or supply for use in:

- (a) The diagnosis, treatment, mitigation, alleviation or prevention of disease or any symptom thereof;
- (b) The diagnosis, treatment, mitigation, alleviation of any abnormal physical or physiological state or any symptom thereof; or
- (c) Altering, modifying, correcting or restoring any organic function in human beings.

7.2.2 It should be noted that:

- (a) The regulation not only applies to clinical trials of unapproved, investigational pharmaceutical products but also to clinical trials of any pharmaceutical products irrespective of their marketing registration status in Hong Kong; and
- (b) Pharmaceutical products not only refer to chemical drugs and biological drugs but also to cell therapies as long as they fall under the definition set out in section 7.2.1 above.

### **7.3 Applications for Certificates for Clinical Trials on Pharmaceutical Products**

- 7.3.1 For the purpose of regulatory compliance, a Certificate for Clinical Trial (“CT Cert”) shall be obtained from the Pharmacy and Poisons Board (“PPB”) through the Drug Office of the Hong Kong Department of Health (“DOH”) before initiation of any clinical trial on any pharmaceutical product.
- 7.3.2 An application for a CT Cert for pharmaceutical product may be submitted under:
- (a) The Standard Scheme; or
  - (b) The Listed Scheme.
- 7.3.3 For clinical trials sponsored by pharmaceutical companies or research organizations, applications for CT Certs shall be submitted under the Standard Scheme.
- 7.3.4 In the event that an investigator plans to initiate and conduct a clinical trial and also acts as the applicant for a CT Cert, the investigator shall take the roles of both sponsor and investigator and become a sponsor-investigator. A sponsor-investigator may opt to submit an application for CT Cert under the Listed Scheme if the use of the pharmaceutical product(s) in a clinical study:
- (a) Has no higher risk than that of standard medical care; or
  - (b) Has somewhat higher risk than that of standard medical care, provided that sufficient justification for the extra risk is made available to and accepted by the PPB.
- 7.3.5 Investigators who wish to apply under the Listed Scheme may check out the relevant risk assessment criteria on the website of

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the Drug Office ([www.drugoffice.gov.hk](http://www.drugoffice.gov.hk)) and assess the eligibility of their applications under the Listed Scheme.

7.3.6 An application for a CT Cert under the Standard Scheme shall contain the following items:

- (a) A completed application form and a completed checklist of clinical trial documents (accompanied by the prescribed application fee)
- (b) A cover letter listing all the submitted documents
- (c) A letter of approval for the trial by the REC affiliated with the institution under which the trial is to be conducted
- (d) A copy of the proposed protocol for the clinical trial
- (e) The proposed subject information sheet and informed consent form (in Chinese only or in both Chinese and English, as applicable)
- (f) A letter from the principal investigator confirming his/her involvement in the clinical trial
- (g) A curriculum vitae of the principal investigator
- (h) Information on the pharmaceutical product (e.g. investigator's brochure, package insert and other product information, if applicable)
- (i) A sample certificate of analysis of each pharmaceutical product
- (j) Evidence that each pharmaceutical product is manufactured in accordance with good manufacturing practice ("GMP") (e.g. a copy of the GMP certificate of the manufacturer)

7.3.7 For an application under the Listed Scheme, only items (a) to (e) listed in section 7.3.6 above together with a completed risk assessment form will need to be submitted.

7.3.8 The following key aspects in respect of applications for CT Certs

should be noted:

- (a) An application for a CT Cert and an application for ethics review could be submitted in parallel, although a CT Cert will not be issued before an approval by the relevant REC is granted.
- (b) In case a clinical trial is also the subject of an application for approval by the China Food and Drug Administration (“CFDA”), the clinical trial approval document issued by the CFDA and a copy of the protocol submitted to the CFDA shall also be submitted.
- (c) No matter the applicant for a CT cert is a pharmaceutical company, a research organization or the investigator himself/herself, the investigator shall always ensure that a valid CT Cert is obtained prior to initiation of a clinical trial and maintained during the period of the trial.
- (d) Each CT Cert is currently valid for five years. An applicant shall obtain a new CT Cert every five years during the period of a clinical trial if the clinical trial continues for over five years.

#### **7.4 Regulation of Clinical Trials on Proprietary Chinese Medicines**

7.4.1 Since December 2010, clinical trials on PCMs are regulated in Hong Kong under the Chinese Medicine Ordinance (Chapter 549 of the Laws of Hong Kong). Under the ordinance, a “proprietary Chinese medicine” means any proprietary product:

- (a) composed solely of (i) any Chinese herbal medicines; or (ii) any materials of herbal, animal or mineral origin customarily used by the Chinese; or (iii) any medicines and materials referred to in subparagraphs (i) and (ii)

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- respectively; as active ingredients;
- (b) formulated in a finished dose form; and
- (c) known or claimed to be used for the diagnosis, treatment, prevention or alleviation of any disease or any symptom of a disease in human beings, or for the regulation of the functional states of the human body.

### **7.5 Applications for Clinical Trials on Proprietary Chinese Medicines**

- 7.5.1 Before initiation of any clinical trial on any PCM, a CT Cert shall be obtained from the Chinese Medicines Board (“CMB”) through the Chinese Medicine Division of the DOH.
- 7.5.2 An application for a CT Cert for PCM shall contain the following items:
  - (a) A completed application form and a completed checklist of clinical trial documents (accompanied by the prescribed application fee)
  - (b) A letter of approval for the trial by the REC affiliated with the institution under which the trial is to be conducted
  - (c) A copy of the proposed protocol for the clinical trial
  - (d) The proposed subject information sheet and informed consent form (in Chinese only or in both Chinese and English and Chinese, as applicable)
  - (e) A sample of each proprietary Chinese medicine
  - (f) A letter from the principal investigator confirming his/her involvement in the clinical trial
  - (g) A curriculum vitae of the principal investigator and a copy of his/her certificate of registration
  - (h) A letter from a Chinese medicine practitioner participating in the clinical trial confirming his/her involvement in the

clinical trial and a copy of his/her certificate of registration (if the principal investigator is not a Chinese medicine practitioner)

- (i) Information on the PCM, including an investigator's brochure, master formula, results of pharmacological and toxicological studies, manufacturing method, product specification, method and certificate of analysis, stability test reports, and test reports on heavy metals and toxic elements, pesticide residues and microbial limit
- (j) Evidence that each PCM is manufactured in accordance with the Hong Kong Good Manufacturing Practice Guidelines for Proprietary Chinese Medicines or equivalent (e.g. a copy of the GMP certificate of the manufacturer)
- (k) Documentary proof and information regarding the clinical trial(s) on the PCM conducted in its country of origin and/or other countries or regions (if any)

7.5.3 In case a trial is also the subject of an application for approval by the CFDA, the clinical trial approval document issued by the CFDA and a copy of the protocol submitted to the CFDA shall also be submitted.

## **7.6 Reporting of Adverse Drug Reactions**

7.6.1 Adverse drug reactions ("ADRs") that are observed in any clinical trial on any pharmaceutical product or PCM and are both serious and unexpected shall be reported to the DOH promptly. The reporting timelines for different kinds of ADRs are as follows:

- (a) For fatal or life-threatening ADRs that are unexpected, initial reporting should be done as soon as possible but no later than seven (7) calendar days after first knowledge by

the CT Cert holder and followed by a complete assessment report within eight (8) additional calendar days.

- (b) Other serious, unexpected ADRs that are not fatal or life-threatening shall also be reported as soon as possible but within fifteen (15) calendar days after first knowledge by the CT Cert holder.
- (c) Non-serious ADRs and serious ADRs that are expected shall be reported in a brief summary at the conclusion of a study.

## **7.7 Progress Reports and Final Reports**

- 7.7.1 CT Cert holders, whether for clinical trials on pharmaceutical products or PCMs, shall have the responsibility to notify the DOH of the updated status of their clinical trials. Progress reports shall be submitted annually during the period of a trial. A final report shall also be submitted at the end of a trial.

## **7.8 Applicability of Overseas Regulations**

- 7.8.1 Clinical studies conducted in Hong Kong are basically subject only to local laws and regulations. However, harmonization of regulations has triggered the globalization trend, transforming contemporary clinical research into an international collaborative effort. Clinical studies conducted in Hong Kong may therefore also be subject to overseas regulations in many circumstances. Examples include:
  - (a) Clinical studies targeted at supporting marketing applications to overseas regulatory agencies (e.g. multicentre, multinational drug trials targeted at global registration).
  - (b) Clinical studies supported and/or funded by overseas governmental or funding bodies (e.g. clinical studies funded by the U.S. NIH).

- (c) Clinical studies conducted in collaboration with overseas organizations (e.g. collaborative multicentre clinical studies conducted in alliance with overseas research institutions).

## **7.9 Investigators' Roles in Regulatory Compliance**

- 7.9.1 Investigators shall have the responsibility to observe, understand and ensure compliance with the latest regulatory requirements.
- 7.9.2 In case an investigator acts as the applicant for a CT Cert, he/she shall have full responsibility for compliance with all applicable local regulatory requirements, including but not limited to reporting of ADRs and submitting progress/final reports as mentioned in sections 7.6 and 7.7 above.
- 7.9.3 In sponsored studies, sponsors are normally the CT Cert holders and hence should take the full regulatory responsibilities. However, investigators still need to make appropriate efforts to ensure compliance by the sponsors with applicable local regulations.
- 7.9.4 Different kinds of clinical studies may be regulated differently in different countries or places. Investigators considering participation in international clinical studies should pay special attention to the applicable overseas regulatory requirements and ensure that they understand and have the ability to comply with the regulations before committing to such studies. Local investigators participating in clinical studies targeting at supporting an application for marketing authorization by the U.S. FDA, for instance, are required to commit to complying with the applicable U.S. FDA regulations by signing a Statement of Investigator (i.e. Form FDA 1572). Investigators who fail to comply with the commitment may be subject to disqualification

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or debarment sanction under U.S. regulations, and be restricted or prohibited from participating in clinical studies supported by any U.S. governmental agency or targeted at supporting any marketing authorization application.

# **8. Compliance with Public Registration Requirements**

## **8.1 Bases for Public Registration of Clinical Trials**

8.1.1 Since the call for more transparent disclosure of clinical trial activities by the International Committee of Medical Journal Editors (“ICMJE”) in September 2004, registration of clinical trials with public clinical trial registries has become a common practice worldwide.

8.1.2 Public registration of clinical trials is deemed an effective way to help achieve the following objectives:

- (a) Avoidance of publication bias through selective reporting of clinical trials with positive results.
- (b) Increasing the awareness of clinical trial activities by the general public, especially local societies.
- (c) Offering a convenient and open channel for people who are interested in participating in clinical trials.

8.1.3 For the purpose of achieving the above objectives, public registration of clinical trials is made an essential requirement in many important regulations and international policies, including (but not limited to):

- (a) The Recommendations for the Conduct, Reporting, Editing, and Publication of Scholarly Work in Medical Journals of the ICMJE;
- (b) Food and Drug Administration Amendments Act (“FDAAA”)

- of the U.S.; and
- (c) The Declaration of Helsinki of the WMA.

## **8.2 Requirements by the ICMJE**

- 8.2.1 To promote public registration of clinical trials, the ICMJE requires that, with effect from July 1, 2005, any clinical trial must be registered with a recognized public clinical trial registry before recruitment of the first trial subject in order to qualify for consideration for publication by its member journals. The ICMJE defines a clinical trial as “any research project that prospectively assigns people or a group of people to an intervention, with or without concurrent comparison or control groups, to study the cause-and-effect relationship between a health-related intervention and a health outcome.” Health-related interventions include all products, procedures and methods that are used to modify a biomedical or health-related outcome, such as drugs, surgical procedures, devices, behavioral treatments, dietary interventions, process-of-care changes, quality improvement interventions and educational programs.
- 8.2.2 To comply with the ICMJE requirement and ensure a clinical trial will be considered for publication by ICMJE member journals (or other medical journals that adopt the same or similar requirements), a clinical trial needs to be registered with ClinicalTrials.gov (i.e. the registry developed by the U.S. NIH) or other “primary registries” recognized by the World Health Organization (“WHO”) under the WHO International Clinical Trials Registry Platform (“ICTRP”). The current list of recognized primary registries is set out in Table 8.1 and an updated list could be accessed from the ICTRP website at [www.who.int/ictrp/network/primary](http://www.who.int/ictrp/network/primary).

8.2.3 It is important to note that the ICMJE only considers registrations with complete and accurate information as valid registrations.

**Table 8.1:** Primary clinical trial registries recognized under the ICTRP of the WHO. An updated list is available on the ICTRP website at [www.who.int/ictcp/network/primary](http://www.who.int/ictcp/network/primary).

Registry	Website
Australian New Zealand Clinical Trials Registry (ANZCTR)	<a href="http://www.anzctr.org.au">www.anzctr.org.au</a>
Brazilian Clinical Trials Registry (ReBec)	<a href="http://www.ensaiosclinicos.gov.br">www.ensaiosclinicos.gov.br</a>
Chinese Clinical Trial Registry (ChiCTR)	<a href="http://www.chictr.org">www.chictr.org</a>
Clinical Research Information Service (CRiS), Republic of Korea	<a href="http://cris.nih.go.kr">cris.nih.go.kr</a>
Clinical Trials Registry - India (CTRI)	<a href="http://ctri.nic.in">ctri.nic.in</a>
Cuban Public Registry of Clinical Trials (RPCEC)	<a href="http://registroclinico.sld.cu">registroclinico.sld.cu</a>
EU Clinical Trials Register (EU-CTR)	<a href="http://www.clinicaltrialsregister.eu">www.clinicaltrialsregister.eu</a>
German Clinical Trials Register (DRKS)	<a href="http://www.germanctr.de">www.germanctr.de</a>
Iranian Registry of Clinical Trials (IRCT)	<a href="http://www.irct.ir">www.irct.ir</a>
ISRCTN.org	<a href="http://www.isrctn.org">www.isrctn.org</a>
Japan Primary Registries Network (JPRN)	<a href="http://rctportal.niph.go.jp">rctportal.niph.go.jp</a>
Thai Clinical Trials Registry (TCTR)	<a href="http://www.clinicaltrials.in.th">www.clinicaltrials.in.th</a>
The Netherlands National Trial Register (NTR)	<a href="http://www.trialregister.nl">www.trialregister.nl</a>
Pan African Clinical Trial Registry (PACTR)	<a href="http://www.pactr.org">www.pactr.org</a>
Sri Lanka Clinical Trials Registry (SLCTR)	<a href="http://www.slctr.lk">www.slctr.lk</a>

### 8.3 Requirements under the U.S. FDAAA

8.3.1 On September 27, 2007, the U.S. government passed the FDAAA (i.e. U.S. Public Law 110-85) which includes a section on clinical trial databases requiring registration of “applicable clinical trials” with [ClinicalTrials.gov](http://ClinicalTrials.gov).

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8.3.2 “Applicable clinical trials” means interventional clinical trials subject to U.S. FDA regulation (i.e. clinical trials that have one or more sites in the U.S, involve a drug, biologic or device that is manufactured in the U.S., or are conducted under an U.S. investigational new drug application (“IND”) or investigational device exemption (“IDE”)), including:

- (a) Applicable Drug Clinical Trials: Controlled clinical investigations (other than phase 1 investigations) of drugs and biologics subject to U.S. FDA regulation; and
- (b) Applicable Device Clinical Trials: Controlled clinical trials with health outcomes of devices subject to U.S. FDA regulation (other than small feasibility studies) and pediatric postmarket surveillance of devices.

8.3.3 A clinical trial must be registered within 21 days after the first subject is enrolled.

## **8.4 Requirements under the Declaration of Helsinki**

8.4.1 In line with the international trend, the WMA for the first time incorporated the requirement of public registration of clinical trials into the Declaration of Helsinki during its General Assembly in Seoul, Korea in October 2008, requiring that every clinical trial must be registered in a publicly accessible database before recruitment of the first subject.

8.4.2 The WMA takes the registration requirement as a general principle and does not specify any particular registry. Registration with any of the WHO-recognized registries is generally deemed sufficient for fulfilling the requirement under the Declaration of Helsinki.

## **8.5 Registration of Investigator/Institution-initiated Studies**

- 8.5.1 Investigators shall be responsible for registering their investigator/institution-initiated studies with recognized public clinical trial registries. For compliance with the ICMJE's requirement, a clinical study must be registered before recruitment of the first trial subject. For compliance with the U.S. FDAAA, registration must be completed within 21 days following recruitment of the first subject.
- 8.5.2 For collaborative clinical studies involving more than one investigator or institution, the participating investigators or institutions shall come to a consensus about who the responsible party should be. Each study shall only be registered once and repeated registrations should be avoided.

## **8.6 Registration of Sponsored Studies**

- 8.6.1 For sponsored studies, sponsors are usually the responsible parties for study registration. If for any reason investigators wish to register their sponsored studies, they shall pay special attention to the following:
- (a) Disclosure of study information is usually subject to confidentiality and non-disclosure obligations under legally-binding contracts with sponsors (e.g. clinical trial agreement or confidentiality agreement). Sponsors' prior written permissions may need to be obtained wherever necessary.
  - (b) Sponsors may have their own policies and practices in public registration of clinical studies. Investigators shall check with the relevant sponsors if they have already registered their clinical studies with any recognized public

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clinical trial registry. Repeated registrations shall be avoided.

## **9. Compliance with Contractual Requirements**

### **9.1 Contractual Requirements for Sponsored or Collaborative Studies**

9.1.1 In the preceding chapters, general requirements applicable to clinical studies conducted under the HA have been outlined. Sponsored or collaborative clinical studies involving parties outside the HA, whether sponsors, collaborators or supporting organizations, may however be subject to additional requirements under contracts or other legal instruments.

9.1.2 Contracts and legal instruments commonly used in sponsored or collaborative clinical studies include (but not limited to):

- (a) Confidentiality agreements;
- (b) Clinical trial agreements;
- (c) Indemnity agreements;
- (d) Financial disclosure statements; and
- (e) Investigator's personal data processing agreements.

Such legal instruments are to be introduced in part 3 of this handbook.

9.1.3 It should be noted that contracts are not necessarily in the form of signed original legal documents. A contract is made where two or more parties have reached agreement (or where they are deemed to have reached agreement) and the law recognizes their rights and obligations arising from the agreement. A contract

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may be made in writing (e.g. by formal documents, letters, facsimiles and e-mails), by word of mouth (e.g. by face-to-face conversations and telephone communications), by inference from the conduct of the parties and the circumstances of the case (e.g. by the actions taken by the parties), or by any combination of the above.

### **9.2 Acceptability of Proposed Contractual Requirements**

9.2.1 Unlike the other requirements described in the preceding chapters, which are generally mandatory and have to be complied with, contractual requirements may reflect the subjective desires of outside parties and may therefore be negotiable.

9.2.2 Before making any commitment under any contract, the following key factors need to be considered:

- (a) Compatibility with other requirements: Mandatory requirements (i.e. HA's management policies, REC requirements, regulatory requirements, international guidelines and, if applicable, public registration requirements) shall always prevail and shall not be overridden by any contract. Any proposed contract term or condition which is in conflict or inconsistent with any mandatory requirement shall be removed or properly modified for alignment with such requirement.
- (b) Operational viability: Every person or organization is facing certain practical limitations or restrictions, whether internally or externally. A contractual requirement can only be accepted if it is practically feasible considering all the internal conditions and the external environment.
- (c) Availability of resources: Some contractual requirements may be both compatible with other mandatory

requirements and practically feasible, but only on condition that extra resources are provided. Acceptance of such contractual requirements shall therefore be subject to availability of suitable and sufficient resources.

### **9.3 Contractual Compliance by Investigators and Institutions**

9.3.1 Each person entering into a contract shall ensure that he/she has the authority or has been duly authorized to enter into the contract.

9.3.2 Depending on the nature of a contract, the contracting party(ies) on the side of a study site may be an investigator, a HA institution, or both. For instance, a confidentiality agreement may be signed under the personal capacity of an investigator, an indemnity agreement may be entered into by an institution on its own and the investigator's behalf, and a clinical trial agreement is normally entered into by both an investigator and his/her affiliated institution. Each contracting party has the responsibility to observe, understand and duly comply with the relevant terms and conditions in a contract.



**Part 3:**  
**Legal Affairs**



# 10. Personal Data Protection

## 10.1 Personal Data Protection under Hong Kong Laws

10.1.1 In Hong Kong, personal data is protected under the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong). Under the ordinance, personal data is defined as any data:

- (a) Relating directly or indirectly to a living individual (i.e. a data subject);
- (b) From which it is practicable for the identity of the data subject to be directly or indirectly ascertained; and
- (c) In a form in which access to or processing of the data is practicable.

10.1.2 The Personal Data (Privacy) Ordinance stipulates six data protection principles that need to be complied with in any activity involving the collection, holding, processing or use of personal data, including:

- (a) Principle 1: Purpose and manner of collection of personal data;
- (b) Principle 2: Accuracy and duration of retention of personal data;
- (c) Principle 3: Use of personal data;
- (d) Principle 4: Security of personal data;
- (e) Principle 5: Information to be generally available; and
- (f) Principle 6: Access to personal data by data subjects.

**10.2 Principle 1: Purpose and Manner of Collection of Personal Data**

10.2.1 The first principle underlying personal data protection is that personal data shall not be collected unless:

- (a) The data is collected for a lawful purpose;
- (b) The collection of the data is necessary for the purpose or directly related to that purpose; and
- (c) The data to be collected is adequate but not excessive in relation to that purpose.

10.2.2 Where personal data must be collected from a data subject, data collection must be performed by means which are lawful and fair. All practicable steps shall be taken by the data user to ensure that the data subject is informed of:

- (a) Whether it is obligatory or voluntary to supply the data, and if it is obligatory to supply the data, the consequences for not supplying the data;
- (b) The purpose for which the data is to be used;
- (c) The classes of persons or parties to whom the data may be transferred; and
- (d) The rights to request access to and correction of the data, and the name(s) or job title(s) and address(es) of the individual(s) to whom any such request may be made.

**10.3 Principle 2: Accuracy and Duration of Retention of Personal Data**

10.3.1 Where personal data has been collected from a data subject, all practicable steps shall be taken by the data user to ensure that:

- (a) Such personal data is accurate having regard to the purpose for which the personal data is used or to be used;
- (b) Where there are reasonable grounds for believing that certain personal data is inaccurate, such data shall either (i) not be used unless and until such data is rectified or those grounds are proven to be inapplicable; or (ii) be erased; and
- (c) Where certain personal data disclosed to a third party is found to be inaccurate, the third party shall be informed of the inaccuracy of such data and be provided with such necessary particulars as will enable the third party to rectify such data.

10.3.2 Personal data shall not be kept longer than is necessary for the fulfillment of the purpose for which the data is used or is to be used.

10.3.3 Without limiting section 10.3.2 above, if a data user engages a data processor, whether within or outside Hong Kong, to process personal data on the data user's behalf, the data user must adopt contractual or other means to prevent any personal data transferred to the data processor from being kept longer than is necessary for processing of the data.

#### **10.4 Principle 3: Use of Personal Data**

10.4.1 Personal data shall not be used for any purpose other than the purpose(s) for which the data was to be used at the time of data collection or a purpose directly related to such purpose(s).

10.4.2 Use of personal data for any new purpose other than for the purposes stated in section 10.4.1 above shall be subject to the prescribed consent of the data subject.

10.4.3 In the event that the data subject is a minor, incapable of

managing his/her own affairs, or mentally incapacitated within the meaning of the Mental Health Ordinance (Chapter 136 of the laws of Hong Kong), and is incapable of understanding the new purpose and deciding whether to give the prescribed consent, the consent of the data subject's legally acceptable representative shall suffice, provided that the data user believes on reasonable grounds that the use of the data for the new purpose is clearly in the interest of the data subject.

## **10.5 Principle 4: Security of Personal Data**

- 10.5.1 Whilst personal data is being held by a data user, all practicable steps shall be taken to ensure that such data is protected against unauthorized or accidental access, processing, erasure, loss or use.
- 10.5.2 In particular, the following aspects regarding data security shall be considered and addressed:
- (a) The kind of data that may be influenced and the harm that could result if any of those incidents set out in section 10.5.1 occurs.
  - (b) The physical location where the data is stored.
  - (c) Any security measures incorporated into any equipment in which the data is stored.
  - (d) Any measures taken for ensuring the integrity, prudence and competence of those persons having access to the data.
  - (e) Any measures taken for ensuring the secure transmission of the data.
- 10.5.3 Without limiting sections 10.5.1 and 10.5.2 above, if a data user engages a data processor, whether within or outside Hong Kong, to process personal data on the data user's behalf, the data user

must adopt contractual or other means to prevent unauthorized or accidental access, processing, erasure, loss or use of the data transferred to the data processor for processing.

## **10.6 Principle 5: Information to Be Generally Available**

10.6.1 All practicable steps shall be taken by the data user to ensure that a person can:

- (a) Ascertain the data user's policies and practices in relation to personal data;
- (b) Be informed of the kind of personal data held by the data user; and
- (c) Be informed of the main purposes for which personal data held by the data user is used or is to be used.

## **10.7 Principle 6: Access to Personal Data by Data Subjects**

10.7.1 A data subject shall be entitled to:

- (a) Ascertain whether a data user holds his/her personal data;
- (b) Request access to his/her personal data within a reasonable time (i.e. 40 days from the date of receipt of a data subject's request by the data user), at a reasonable fee (if any), in a reasonable manner, and in a form that is intelligible;
- (c) Request the correction of his/her personal data; and
- (d) Be given reasons if any request referred to in items (b) and (c) above is refused, and object to any such refusal.

## **10.8 Personal Data Protection in Clinical Research**

10.8.1 Clinical research is about collection and use of data from or relating to human subjects and obviously the issue of personal data protection needs to be addressed.

- 10.8.2 In recruiting a patient to participate in a clinical study, the collection, holding, processing and use of the patient's personal data will be subject to prior consent of the patient and in accordance with the requirements under the Personal Data (Privacy) Ordinance.
- 10.8.3 Personal data of human subjects in clinical studies may need to be disclosed or transmitted to third parties for various purposes including (but not limited to) inspection by local or overseas regulatory agencies and auditing/monitoring by auditors/monitors designated by sponsors, collaborators or supporting organizations (for sponsored studies or studies conducted in collaboration with or with the support of outside parties). Express prior consent must be obtained from the research subjects for such purposes.
- 10.8.4 Unless otherwise necessary and expressly permitted by the research subjects, where personal data are to be presented, whether in the form of published results or otherwise, such data shall be presented in a way from which the subjects could not be identified.
- 10.8.5 The requirements for obtaining the consent of research subjects will be discussed in the next chapter.

## **10.9 Protection of Investigators' Personal Data**

- 10.9.1 In addition to collection of data from research subjects, sponsors also need to collect, hold, process and use investigators' personal data (e.g. investigators' curricula vitae) for various purposes such as regulatory compliance or retention in sponsors' databases for future feasibility assessments.
- 10.9.2 To avoid contravening any data protection law or regulation,

sponsors may request each investigator to sign an investigator's personal data processing agreement which permits sponsors to collect, hold, process and use investigators' personal data.



# **11. Informed Consent**

## **11.1 Concepts of Informed Consent**

11.1.1 Informed consent is a process by which a subject is informed of the nature, purpose, known/potential risks, complications and benefits, as well as all other relevant aspects of a clinical study, and voluntarily confirms his/her willingness to participate in the study. It became a major requirement in clinical research since it was first made a legal requirement in the U.S. through adoption of the Kefauver-Harris Drug Amendments in 1962. The requirement was subsequently incorporated into the Declaration of Helsinki in 1964 and the ICH GCP in 1996. Nowadays, it is a core element of human research ethics and has been included as a legal requirement in many jurisdictions.

11.1.2 An informed consent process must consist of two undividable parts – informing (by investigators and/or study personnel) and consenting (by a human subject or his/her legally acceptable representative) – which are of equal importance. Although nowadays written informed consent is usually required for documenting human subjects' informed consent, strictly speaking an informed consent process starts from the moment when a potential human subject first learns about a clinical study, whether through a subject recruitment advertisement on a newspaper, a public clinical trial registry on the Internet, a subject recruitment poster in a clinic or a face-to-face invitation by an investigator at a study site. It is important to emphasize that a complete informed consent process does not simply involve obtaining an informed consent form carrying a human subject's signature.

## **11.2 Investigators' Responsibilities in Informed Consent**

11.2.1 An investigator has the ultimate responsibility in an informed consent process, and shall ensure that:

- (a) The informed consent form(s) and any other written information (including any subsequent amendment of such documents) to be provided to each human subject are submitted to and approved by the relevant REC(s) and the local regulatory authority (if needed) before they are used (see chapters 6 and 7 for the detailed requirements);
- (b) The informed consent discussion with each human subject is conducted either personally by the investigator or through a qualified person designated by the investigator;
- (c) Each human subject is provided with sufficient opportunity to ask any question he/she may have in relation to the study and sufficient time to consider his/her participation in the study;
- (d) Each informed consent form is signed and dated personally by the human subject and the person who conducted the informed consent discussion (i.e. either the investigator or his/her designee); and
- (e) Each fully signed informed consent form shall be properly kept.

## **11.3 Essential Elements of Informed Consent**

11.3.1 To facilitate a potential human subject to make an informed and considered judgment about his/her participation in a clinical study, sufficient details about the study must be provided, and such details must be conveyed and explained in an easily understandable manner in terms of the contents, the presentation and the language used.

11.3.2 The ICH GCP Section 4.8.10 lists out 20 essential elements that must be incorporated into the informed consent process in respect of any human subject for any clinical study, including statements or descriptions about:

- (a) Study purposes and arrangements
  - The research nature of the study
  - The purposes of the study
  - The details of the study treatment and any randomization arrangement
  - The experimental aspects of the study
  - The detailed study procedures
  - The expected duration of participation in the study by the subject
  - The circumstances where the subject's participation in the study will be terminated
  - The approximate number of subjects involved or to be involved in the study
- (b) Potential risks and benefits
  - The potential benefits of the study
  - The foreseeable risks of the study
- (c) Subject's rights and responsibilities
  - The right of voluntary participation in and free withdrawal from the study
  - The availability and details of any alternative treatment
  - The right to be promptly informed of any new information that may affect the subject's willingness of continuous participation in the study
  - The right to contact a designated person for study-related matters and his/her contact details
  - The subject's responsibilities in the study
- (d) Personal data protection
  - The measures to be taken to protect the confidentiality of

the subject's identity and records

- The subject's permission to provide access to his/her personal data by certain designated parties and regulatory authorities

(e) Compensation and costs

- Any payment to the subject
- The compensation and treatment available in the event of study-related injury
- Any cost that may need to be borne by the subject

11.3.3 The informed consent process must comply with local laws and ethics. Investigators must ensure that the conduct of the process should never be less stringent than such requirements. For example, the Code of Professional Conduct of the Medical Council of Hong Kong stipulates that, in explaining the risks of a proposed treatment to a patient, the explanation should cover not only significant risks but also risks of serious consequence even though the probability is low (i.e. low-probability-serious-consequence risks). In sponsored, multinational, multicentre clinical studies, sponsors usually prepare and provide sample informed consent forms for use by individual investigators. Investigators shall review such samples and make necessary adaptations to reflect the local requirements.

11.3.4 Human subjects' legal rights shall never be restricted by informed consent. In no circumstances shall any human subject be required during an informed consent process to waive any of their legal rights or to release any investigator, institution, sponsor or any party participating in the organization, conduct or coordination of a clinical study from any liability, whether related to the adverse effect of an investigational product, negligence or malpractice of any relevant party or personnel, or otherwise.

## **11.4 Informed Consent by Vulnerable Subjects**

11.4.1 Vulnerable subjects are individuals whose willingness to volunteer in a clinical study may relatively easily be unduly influenced by biases, unjustified expectations or coercive factors, or who are incapable of providing informed consent. Examples include pediatric subjects, emergency patients (e.g. unconscious patients admitted to a hospital's emergency department) and patients with severe mental disorders or neurological diseases (e.g. severe Alzheimer's disease). Obtaining informed consent in respect of clinical research on these vulnerable subjects has always been a controversial issue in human research ethics as compliance with the fundamental ethical principle of informed and voluntary participation may be difficult to be demonstrated and protection of those subjects becomes a bigger challenge. For the advancement of medical care for those specific groups of patients, however, clinical research involving them is unavoidable. To balance the needs for healthcare advancement and protection of human subjects, alternative arrangements shall be implemented to facilitate the informed consent process without compromising those subjects' rights, safety and well-being.

11.4.2 Many organizations, initiatives and regulatory agencies have attempted to address this issue by establishing guidelines or regulations. The Declaration of Helsinki, for instance, outlines a few key principles:

- (a) Informed consent by subjects' legally authorized representatives: If a subject is incapable of giving informed consent, the informed consent of his/her legally authorized representative shall be obtained. As soon as the subject becomes capable of giving consent, an informed consent to

continue participating in the study shall be obtained from the subject.

- (b) Potential benefits to subjects or the population represented by the subjects: A vulnerable subject should not be included in a clinical study unless he/she or the population represented by him/her could potentially benefit from the study.
- (c) Minimal risk and burden: A vulnerable subject should not be included in a clinical study unless the study entails no more than minimal risk and burden to him/her.
- (d) Assent by subjects: If a vulnerable subject is deemed to have sufficient intellectual ability to understand the key aspects of a study, his/her assent shall also be obtained. Whilst the subject's assent alone does not establish a sufficient informed consent, his/her refusal is sufficient to exclude him/her from a study.

11.4.3 Informed consent in respect of clinical research is generally seen as a research ethics issue in Hong Kong and the responsibility of overseeing and governing informed consent for clinical research has been staying mainly with the local RECs. Any arrangement to recruit vulnerable subjects shall only be practiced with the prior written approval of the relevant REC(s).

11.4.4 In the absence of a specific law or regulation about informed consent for clinical research, investigators and RECs in Hong Kong have to be especially vigilant in considering any measure applying to obtaining consent from vulnerable subjects. In addition to the relevant principles set out in international guidelines such as the Declaration of Helsinki, the following principles underlying the local requirements of obtaining consent in relation to provision of medical treatments to mentally incapacitated persons under the Mental Health

Ordinance (Chapter 136 of the laws of Hong Kong) may also be taken as a reference:

- (a) Consent to the carrying out of treatment for a mentally incapacitated person may be given by the guardian of that person appointed under the ordinance.
- (b) Any proposed treatment for a mentally incapacitated person shall be in the best interests of, or considered to be in the best interests of, that person.

11.4.5 One key principle, among the others outlined above, is that vulnerable subjects shall not be deprived of the opportunity of treatment and therefore not be assigned, by randomization or otherwise, to receive only placebo or any other treatment that is considered inferior to the best standard treatment offered by the HA to the population of patients represented by those subjects.



# 12. Confidentiality

## 12.1 Concepts of Confidentiality

- 12.1.1 Confidentiality is the state where certain information – which is confidential in nature – is being kept secret. It is defined by the International Standards Organization (“ISO”), in ISO-17799, as “ensuring that information is accessible only to those authorized to have access.”
- 12.1.2 Confidential information is information that is not publicly available, and must not be disclosed without the permission of the information owner or controller. It is a broad concept which does not have a general definition, and therefore needs to be specifically defined with respect to the subject matters and individual circumstances. For example, a medical doctor owes a duty of confidentiality to his/her patients in respect of the patients’ information that he/she has gained in his/her professional capacity. To an investigator of a clinical study, however, confidentiality may not be limited to the doctor-patient relationship. It may embrace commercial secrets (e.g. patents and other intellectual properties) and technical information (e.g. knowhow and manufacturing methods), as well as general information having special importance to the information owner or controller.
- 12.1.3 Confidential information is not necessarily carried in written documents. It may be recorded in other media such as electronic storage device and video tapes, in the form of physical items such as models or apparatus, or even in non-material forms such as oral information or simply observation.

- 12.1.4 Confidential information may carry great value, whether commercial (e.g. proprietary information), ethical (e.g. personal data) or otherwise. Breach of confidentiality may cause losses, harm or damage to the information owner or controller.

## **12.2 Confidentiality in Clinical Research**

12.2.1 During the preparation for and the conduct of a clinical study, confidential information may need to be utilized or may be generated. There are three main kinds of information that may be utilized in or generated from clinical studies and may be subject to confidentiality:

- (a) Scientific and technical information: Information relating to research, development and manufacturing of investigational medical products, procedures or methods, which may be proprietary in nature (e.g. study protocols, investigator's brochures and chemical, manufacturing and control documents of investigational products).
- (b) Business and operational information: Information in relation to the business and operations of the participating parties (e.g. business secrets, business plans, pricing strategies, client information and standard operating procedures).
- (c) Personal information: The personal data of human subjects, investigators and other research personnel (e.g. human subjects' medical records and investigators' and research personnel's curricula vitae).

12.2.2 In sponsored clinical studies, sponsors are normally the owners of the proprietary information relating to their investigational products and therefore are especially concerned about the protection of confidentiality.

- 12.2.3 To ensure that confidential information is kept confidential in a proper manner, written confidentiality agreements (“CDAs”) are commonly used to document the terms and conditions of confidentiality.

### **12.3 Confidentiality Agreement**

- 12.3.1 A CDA is a legal contract in which one or more of the contracting parties assume confidentiality obligations in respect of the confidential information received from the other contracting party(ies) for a particular purpose. A CDA may also be called a “secrecy agreement” or a “non-disclosure agreement.”

- 12.3.2 A CDA may be unilateral (i.e. only one contracting party assumes confidentiality obligations) or mutual (i.e. all contracting parties assume confidentiality obligations). A contracting party disclosing confidential information is a “discloser” or “disclosing party” and a contracting party receiving confidential information is a “recipient” or “receiving party.” In a mutual CDA, a party could be both a discloser and a recipient.

- 12.3.3 CDAs commonly impose the following three confidentiality obligations on recipients of confidential information:

- (a) A recipient shall not disclose any confidential information of a discloser to any third party.
- (b) A recipient shall only disclose the confidential information of a discloser to his/her employees, officers, agents and affiliates on a “need-to-know” basis for fulfilling the purposes specified in a CDA.
- (c) A recipient shall not use any confidential information of a discloser for his/her own benefits or for any purpose other

than the purposes specified in a CDA.

12.3.4 Notwithstanding the above, it should be noted that not all the information disclosed by a discloser to a recipient is confidential in nature and such information may fall outside the scope of confidentiality obligations on the part of the recipient. Such information may include:

- (a) Information that was already in the public domain before its disclosure by the discloser to the recipient;
- (b) Information that was already lawfully in the possession of the recipient before receipt of the information from the discloser,
- (c) Information that becomes known to the public through no fault of the recipient;
- (d) Information that becomes known to the recipient from a third party that has a lawful right to disclose such information; and
- (e) Information that is/was independently developed by the recipient without utilizing or referencing the discloser's confidential information.

12.3.5 Time is of the essence to the performance of confidentiality obligations under a CDA. In each CDA, there are two important time periods that need to be specified:

- (a) The period during which confidential information may be disclosed (e.g. one year from the date of a CDA).
- (b) The period during which the confidentiality obligations shall apply (e.g. three years from the time of disclosure).

Perpetual confidentiality obligations are difficult to be observed and complied with and should be avoided unless on specially

justified grounds.

## **12.4 Confidentiality Obligations of Investigators and Institutions**

- 12.4.1 For sponsored studies, sponsors normally require execution of CDAs as early as in study sites identification and feasibility assessment stage to make sure that all their confidential information is protected. Since investigators' affiliated institutions are normally not yet involved in such an early stage, sponsors usually enter into CDAs directly and only with investigators. Being a contracting party under a CDA, an investigator has the full responsibility to comply with all the confidentiality requirements and will be personally liable for any breach of his/her confidentiality obligations. An investigator has to make sure that he/she fully understands the confidentiality requirements and is able to comply with such requirements.
- 12.4.2 In the event that a CDA is entered into between a sponsor and an investigator's affiliated institution, the CDA shall be signed by an authorized representative of the institution, who is the institution's CCE/HCE or designee, and the institution shall assume the confidentiality obligations. As an employee of the institution, an investigator shall be bound by the CDA in the same manner as the institution.
- 12.4.3 Investigators and institutions shall take reasonable measures, at a standard no less stringent than the prevailing mechanism for protection of their own confidential information, to comply with the confidentiality obligations under CDAs.
- 12.4.4 Where confidential information needs to be disclosed to any of the investigator's colleagues or the institution's employees, officers, agents or affiliates through the investigator or the

institution, the investigator or the institution (as the case may be) shall fully inform them of the confidentiality requirements under the CDA and take necessary steps to bind them to the obligations, whether by a statement made by the recipients to follow the obligations under the CDA or by a separate CDA between the recipient and the investigator or institution (as the case may be).

# 13. Clinical Trial Agreements

## 13.1 Six Principles Underlying Clinical Trial Agreements

13.1.1 Clinical trial agreements (“CTAs”) are required to be entered for sponsored clinical studies for the purpose of setting out the rights and responsibilities of sponsors, institutions, investigators and other research personnel.

13.1.2 All CTAs shall be so drafted and entered into to reflect the following six key principles:

- (a) Study site interests: The interests of the institutions, investigators and research personnel shall be fairly protected.
- (b) Controlled risk: The risk exposure of the institutions, investigators and research personnel shall be limited within a reasonably acceptable level.
- (c) Operational viability: All the study-specific operational requirements shall be reasonably practicable in respect of the specific environment, conditions, manpower and resources of the study teams and study sites.
- (d) Services priority: The normal healthcare services of the institutions shall not be adversely affected.
- (e) Ethics: Nothing shall directly or indirectly compromise the rights, safety or well-being of any human subject.
- (f) Compliance: No terms or conditions shall be in conflict or inconsistent with any applicable law or regulation, REC requirement and international guideline, as well as the institutions’ management policy.

## **13.2 Major Contents of Clinical Trial Agreements**

13.2.1 Whilst each clinical study is different and the terms and conditions of CTAs may vary, harmonization of international requirements for clinical research has set the ground for standardization of CTAs. In spite of the need to adapt to study-specific or local requirements, a CTA would generally address the following aspects (where applicable):

- (a) Study management
  - Supply of investigational products and/or study materials
  - Safety reporting
  - Appointment of contract research organization
  - Monitoring, auditing and inspection
  - Financial arrangements
- (b) Study site operations
  - Recruitment of human subjects and informed consent
  - Completion and verification of case report forms
- (c) Handling of study information
  - Ownership of study data and intellectual property rights
  - Confidentiality
  - Registration of study and publication of study results
  - Use of parties' names
  - Archiving of study records
- (d) Liability management
  - Indemnity and insurance
  - Limitation of liability
- (e) Legally related provisions
  - Amendment and assignment of agreement
  - Termination of agreement
  - Disputes resolution
  - Governing law

- 13.2.2 The above list of topics shall however not be construed as an exhaustive list of requirements for all CTAs. Any other specific aspects that are deemed to have importance to a study shall also be addressed in a CTA.

### **13.3 Master Clinical Trial Agreements**

- 13.3.1 In order to streamline the CTA negotiation process, in 2010, the HA Legal Services Department (“HALSD”) developed and issued its first standard master CTA template reflecting the principles set out in section 13.1.2 and the major contents listed out in section 13.2.1 above. The template comprises:

- (a) A cover agreement;
- (b) A set of general terms and conditions; and
- (c) A set of sample schedules.

- 13.3.2 A copy of the standard master CTA template is available from each CREC secretariat.

- 13.3.3 Any sponsor intending to arrange for the conduct of any clinical study in any of the HA institutions may enter into a master CTA with the HA simply by adopting the standard template, or otherwise discuss with the HALSD on reasonable modifications to the template. Signing of a cover agreement (with the general terms and conditions and sample schedules attached) by the authorized representatives of a sponsor and the HA means that any future clinical study to be arranged by the sponsor at any HA institution would be subject to the set of general terms and conditions.

### **13.4 Study-specific Clinical Trial Agreements**

- 13.4.1 With a master CTA in place, a sponsor does not need to

renegotiate on the general terms and conditions for each clinical study but may simply complete a set of schedules by providing the study-specific information (such as the study protocol title, investigator particulars, study budget and payment terms) and submit the set of completed schedules through the relevant investigator and CREC secretariat to the HALSD for legal review.

- 13.4.2 The HALSD will review the legal terms of the draft schedules and return its confirmation or comments through the investigator and CREC secretariat.
- 13.4.3 It is important to note that the HALSD is only responsible for reviewing the legal contents of the schedules. Investigators and institutions (including cluster/institution management and departmental management, where appropriate) shall evaluate the operational and financial arrangements and determine if those requirements are acceptable and in line with the principles under section 13.1.2.
- 13.4.4 The finalized schedules, by referencing the master CTA, constitute a tripartite CTA among the sponsor, the investigator and the institution. The investigator shall sign the CTA in his/her own capacity. The institution management, represented by the CCE or HCE (or delegate), shall sign on behalf of the institution.
- 13.4.5 Whilst the other research personnel are not contracting parties to a CTA, the investigator shall have the responsibility to fully inform them of their respective responsibilities in the study and to ensure that they comply with the contractual requirements.

# **14. Conflicts of Interest and Financial Disclosure**

## **14.1 Concepts of Conflicts of Interest**

14.1.1 A conflict of interest is the co-existence of multiple interests, where pursuing one interest could compromise the others. In the evaluation of such conflicts of interest, special attention should be paid to differentiate the following two related but different concepts:

- (a) Potential conflict of interest: A situation where a party is involved in multiple interests that may come into conflict.
- (b) Real conflict of interest: A situation where a party cannot pursue one interest without compromising another interest.

14.1.2 It is important to note that there is nothing intrinsically wrong with potential conflicts of interest. The key is how potential conflicts of interest could be prevented from transforming into real conflicts of interest, and how they could be avoided from being perceived by different stakeholders and the public as real conflicts of interest.

## **14.2 Conflicts of Interest in Clinical Research**

14.2.1 In clinical studies, investigators are playing the key role in testing investigational medical products, procedures or methods on human subjects. Having the dual roles of a researcher and a medical practitioner, an investigator on the one hand desires to pursue a successful clinical study and on the other hand has the

responsibilities to safeguard the rights, safety and well-being of human subjects and to ensure unbiased study design, data collection and analysis, and reporting and interpretation of results. In sponsored clinical studies, the ties between investigators and sponsors, whether financial or otherwise, may create another dimension of potential conflicts of interest.

14.2.2 Significant interests of investigators that may potentially lead to conflicts of interest in clinical studies include (but not limited to):

- (a) Proprietary interest in an investigational product (e.g. any form of ownership or any right in any patent, trademark or other intellectual property);
- (b) Equity interest in an organization which has ownership over the investigational product or the results of a study (e.g. stocks and stock options of a sponsor);
- (c) Financial payments or valuables in addition to the costs for conducting a study (e.g. honoraria and donation of equipment);
- (d) Financial arrangements linking to the outcomes of a study (e.g. royalty interests in the sales of an investigational product); and
- (e) Decision-making or consulting position in an organization which has ownership over the investigational product or the results of a study (e.g. directorship or scientific committee membership in a sponsor).

14.2.3 Disclosure of potential conflicts of interest is generally regarded as an effective way to avoid or minimize real conflicts of interest and is commonly practiced nowadays by many regulatory agencies, RECs and research institutions worldwide.

### **14.3 Disclosure Requirements by the U.S. FDA**

14.3.1 The U.S. FDA has clear requirements about financial disclosure by investigators. Under the U.S. Code of Federal Regulations Title 21 Part 54 (i.e. 21 CFR 54), each investigator participating in a clinical study targeted at supporting an application for marketing authorization by the U.S. FDA (whether investigators within or outside the U.S.) is required to disclose the following significant financial interests in relation of a clinical study:

- (a) Any financial arrangement linked to the outcomes of the study
- (b) Any financial payment or compensation of over US\$25,000 in addition to the costs of conducting the study
- (c) Any proprietary interest in the investigational product
- (d) Any equity interest in the sponsor that exceeds US\$50,000

14.3.2 In order to fulfill the above requirements, sponsors typically require each investigator to submit a financial disclosure statement to disclose any of those significant financial interests or to certify the absence of such interests.

### **14.4 Disclosure Requirements by the Hospital Authority**

14.4.1 In the HA, potential conflicts of interest is an essential element for review and approval of clinical studies by the CRECs. Each investigator participating in a sponsored clinical study is required to declare any potentially conflicting interest to the relevant CREC by completing an investigator's conflict of interest declaration form and include it in the initial clinical research ethics review application dossier. Potential conflicts of interest that arise during the period of the study, if any, shall also be disclosed actively by the investigator to the CREC for consideration.

- 14.4.2 The presence of potential conflicts of interest does not necessarily prohibit an investigator from participating in a clinical study, provided that appropriate steps are taken to avoid any potential bias or impairment that may result from any of the disclosed interests. CRECs have the authority to request investigators to provide more detailed information about any disclosed interest and to demand that precautionary actions be taken to avoid occurrence of real conflicts of interest.

**Part 4:**  
**Quality and Risk**  
**Management**



# **15. Resources Planning and Management**

## **15.1 Resources Management at Study Sites**

15.1.1 Clinical studies are complicated activities requiring utilization of different kinds of resources. Investigators, being the key persons holding the final responsibilities at study sites, shall manage such resources carefully in order to ensure successful initiation and completion of their clinical studies.

15.1.2 Resources management at study sites include (but not limited to) the following key aspects:

- (a) Human resources management and study site personnel training
- (b) Facilities management
- (c) Financial management

## **15.2 Human Resources Management**

15.2.1 The conduct of clinical studies usually requires different kinds of expertise and a lot of manpower. Without a team of research personnel, a clinical study may not be carried out and completed properly.

15.2.2 A clinical study team usually consists of the following members:

- (a) Principal investigator: A medical professional (usually a medical doctor) who assumes the role of a responsible leader and is holding the final responsibilities at a study site.

- (b) Co-investigators/Sub-investigators: Other investigators (maybe medical doctors or other medical or scientific professionals such as radiologists, pharmacists, laboratory technologists and medical statisticians) who are responsible to and share part of the responsibilities of the principal investigator.
- (c) Clinical research coordinators: Other research personnel (usually nurses or research assistants) who assist the investigators in coordinating and facilitating the operational and administrative duties in relation to a clinical study, such as scheduling study visits, completing case report forms, collecting blood specimens and performing certain study procedures as designated by the principal investigator.

15.2.3 The principal investigator shall ensure that sufficient manpower and expertise are available, during the entire study period, for the proper conduct and completion of the study, and shall have the authority to assign duties to his/her team members, provided that:

- (a) An updated list of study team members is maintained and the main duties assigned to each of the members are clearly documented;
- (b) All study team members are qualified by education, training and experience in the area of the study and in respect of the duties assigned, and such qualifications are documented in their respective updated curricula vitae and training records;
- (c) All study team members are well-informed of the key elements of the study (such as the study design and the nature of the investigational products) and the requirements for the duties assigned; and
- (d) The principal investigator is finally responsible for the performance of his/her study team members.

- 15.2.4 Special attention shall be paid on balancing study team members' regular duties under their employments and the clinical study duties assigned. If necessary, employment of short-term staff may be considered subject to availability of funding and approval by the institution's human resources department.

### **15.3 Study Site Personnel Training**

- 15.3.1 Training is an important measure to enhance compliance and quality management in clinical research. In addition to their professional training and qualifications, investigators and study site personnel should, as expressly required under the ICH GCP and the latest version of the Declaration of Helsinki, acquire knowledge on the principles of clinical research ethics and GCP through appropriate training and learning – by participating in training workshops/seminars, joining e-learning programs, sitting for examinations, self-studying or otherwise.
- 15.3.2 On-site training is generally deemed an effective and efficient mode of training as it allows direct interaction and experience sharing. HAHO organizes workshops on clinical research on a regular basis. Investigators and study site personnel are encouraged to attend such workshops and to learn about the latest clinical research principles and developments.
- 15.3.3 On-line training is an alternative for study site personnel who are not able to attend training workshops. For example, an international e-learning platform on human research ethics and GCP – TRREE (Training and Resources in Research Ethics Evaluation Programme) – is accessible over the Internet at [www.TRREE.org](http://www.TRREE.org) to clinical research personnel worldwide free-of-charge.

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- 15.3.4 To ensure regulatory compliance, investigators and other study site personnel participating in sponsored clinical studies may be required by sponsors to attend their respective training programs on ICH GCP.

### **15.4 Facilities Management**

- 15.4.1 An investigator shall evaluate the requirements of a clinical study in order to determine the necessary facilities needed for the conduct of the study, be it spaces, equipment or otherwise.
- 15.4.2 Use of facilities in an institution is subject to approval by the institution and/or the relevant departments. An investigator shall discuss with the responsible parties and obtain approval before committing to carrying out a study.
- 15.4.3 Investigators shall ensure that the facilities used in a clinical study are under appropriate maintenance wherever required. Maintenance records, if any, shall be kept properly.
- 15.4.4 For sponsored studies, sponsors may supply to investigators and institutions with equipment or other facilities necessary for the conduct of their studies. Investigators shall keep and handle such equipment or facilities with care and shall use reasonable efforts to safeguard them from accidental loss or damage.

### **15.5 Financial Management**

- 15.5.1 The conduct of clinical studies may require extra financial resources that are not covered by the institutions' regular operating budgets. An investigator shall be responsible for financial management in respect of his/her clinical study in accordance with his/her institution's policies and requirements, including (but not limited to):

- (a) Budgeting for the study;
- (b) Securing sufficient funding for running the study;
- (c) Managing the incomes and expenses in relation to the study;  
and
- (d) Communicating with his/her institution's finance department on administration of all financial transactions.

15.5.2 Investigators shall take into account all study-induced costs in budgeting for their clinical studies. In the event that a study is conducted in parallel with the patients' routine care in an institution, all extra costs incurred on top of standard care or routine clinical services shall be considered study-induced costs and additional funding shall be secured to cover such costs. Investigators shall discuss with the institution's finance department and/or the relevant service departments to assess the study-induced costs for study budgeting purpose.

15.5.3 Sponsorship or funding received from outside parties for supporting clinical studies, whether from commercial sponsors or other research funding bodies, are normally accounted as "alternative sources of income" ("ASOI") according to the HA's accounting system. Investigators shall report all study-related incomes to their institutions' finance departments and distribute the incomes according to the institutions' policies.



# 16. Retention of Study Documents and Records

## 16.1 Purpose of Study Documents and Records Retention

16.1.1 All clinical studies aim at collecting data to answer research questions set out in study protocols. Clinical research is the core of evidence-based medicine, and evidence must be supported by documentation. It is therefore important that major documents and records are properly kept during and after completion of a clinical study to allow verification, analysis and reporting of study results and data, as well as reconstruction and evaluation of clinical studies.

16.1.2 Investigators and institutions have the responsibility to retain documents and records that are used for or created from the conduct of clinical studies at their study sites. Such documents and records could be divided into two categories:

- (a) Study specific documents and records: All the documents and records that are specifically used for conducting a clinical study or generated specifically for a study (e.g. study protocols, ethics submission and approval documents, case report forms and other worksheets used for collection of study data).
- (b) Medical records: The medical records of human subjects (e.g. hospital patient records, medical charts, laboratory testing results and X-ray films) which carry the common identifiers (e.g. names, identity card numbers, dates of birth and genders) and therefore could be directly used to identify

individual subjects.

## **16.2 Records Retention for Investigator/Institution-initiated Studies**

- 16.2.1 In Hong Kong, there is no specific regulatory requirement in respect of retention of clinical study documents and records. However, where a document or record contains personal data, the Personal Data (Privacy) Ordinance requires that all practicable steps must be taken to ensure that such personal data is not kept longer than is necessary for the direct purpose of the study and other related purposes as agreed by individual research subjects in the informed consent process (see section 10.3.2 above).
- 16.2.2 Medical records are the properties of HA institutions and therefore have to be kept in accordance with the HA's policies. The HA has developed a central electronic clinical management system ("CMS") which stores the large majority of the medical records for its patients. Paper medical records are retained in accordance with the Manual of Good Practices in Medical Records Management (version July 2014) issued by the Health Informatics Section of the HA Information Technology Services. In normal circumstances, hospital inpatient and specialist clinic outpatient paper medical records are retained for six years and general outpatient paper medical records are kept for three years after the last follow up of a patient. Radiological films are stored only for one to four years. Investigators and/or institutions should check from the updated version of the aforesaid manual from time to time for the latest arrangements.
- 16.2.3 Investigators and/or institutions shall determine for how long study documents and records should be retained. If extended

retention of medical records is required, investigators shall communicate with the Health Information and Records Department of the relevant HA institution.

### **16.3 Records Retention for Sponsored Studies**

- 16.3.1 The ICH GCP aims at harmonization of regulations for clinical studies targeted at supporting applications for marketing authorization of investigational products by regulatory authorities, and therefore requires all study documents and records to be retained for at least two years after the last approval of a marketing application in the ICH region and until there are no pending or contemplated marketing applications in the ICH region or at least two years after the formal discontinuation of clinical development of an investigational product.
- 16.3.2 Since the ICH GCP does not specify a definite timeline for retention of study documents and records, implementation of the requirement is difficult in practice. For this reason, the industry now tends to set a defined archiving period, usually up to 15 years after study closure, which is generally longer than enough for fulfilling the ICH GCP requirement.
- 16.3.3 Investigators and institutions shall assess whether or not there is sufficient storage space and proper mechanism established to fulfill the long-term archiving requirements of sponsors. In the event that such requirements could not be met, the following alternative arrangements may be considered:
- (a) The sponsor may be requested to archive, on behalf of the investigator and the institution, the study specific documents and records in the sponsor's own storage facility or an independent third-party storage facility, provided that

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all such documents are placed and sealed in carton boxes at the study site before being transported to any outside storage facility and shall not be retrieved, transferred to another place, or accessed for whatever purpose without the prior written consent of the investigator or the institution.

- (b) The sponsor may be requested to provide reasonable funding to facilitate archiving of such study specific documents and records in a third-party storage facility according to the sponsor's requirements.

16.3.4 Notwithstanding the above, it should be emphasized that medical records shall always be kept by HA institutions. Investigators shall liaise with the Health Information and Records Department of the relevant institutions for extended retention of medical records if required.

# 17. Monitoring, Auditing and Inspection

## 17.1 Quality Control Measures

17.1.1 Compliance and data integrity are the key aspects reflecting the quality of clinical studies. To ensure compliance with relevant requirements and integrity of study data, the following quality control measures are commonly taken:

- (a) **Monitoring:** The act of overseeing the progress of a clinical study, verifying the proper documentation and reporting of study data, and ensuring that the study is properly conducted by the investigators and the study team in accordance with the study protocol and other relevant requirements.
- (b) **Auditing:** A systematic and independent examination of clinical study activities, documents and facilities, during or after completion of a study, to determine whether a study was conducted according to its protocol and applicable requirements.
- (c) **Inspection:** The act by a regulatory agency of conducting an official review of the documents, facilities, records and other resources related to a clinical study for the purpose of verifying the reliability of study data and compliance with applicable regulatory requirements.

## 17.2 Monitoring and Auditing for Sponsored Studies

17.2.1 Monitoring of sponsored studies is normally performed

regularly during the studies by study monitors (also commonly called clinical research associates (“CRAs”)) designated by the sponsors’ clinical research teams.

- 17.2.2 Auditing of a sponsored study may be performed by an auditor of the sponsor’s quality management department, which is independent from the clinical research team, or by an external auditor appointed by the sponsor.
- 17.2.3 Investigators and institutions have the responsibilities to facilitate monitoring and auditing activities reasonably requested by sponsors. The detailed monitoring and auditing arrangements should preferably be agreed with sponsors and documented in CTAs.

### **17.3 Monitoring for Investigator/Institution-initiated Studies**

- 17.3.1 For investigator/institution-initiated studies, investigators and/or institutions are responsible for formulating appropriate monitoring plans corresponding to the key quality and risk factors such as:
  - (a) The clinical, ethical and legal risk of the studies;
  - (b) The operational complexity of the studies;
  - (c) The types of human subjects;
  - (d) The target numbers of human subjects; and
  - (e) The duration of the studies.
- 17.3.2 Monitoring of investigator/institution-initiated studies may be performed by in-house study monitors designated by the investigators and/or institutions, or by contracted professional organizations.

#### **17.4 Auditing by Research Ethics Committees**

- 17.4.1 CRECs have the authority to audit clinical studies, whether sponsored or investigator/institution-initiated studies, under their jurisdiction.
- 17.4.2 CRECs may perform two types of audits, including:
  - (a) Routine audits; and
  - (b) For-cause audits.
- 17.4.3 Routine audits may be performed as a general quality control measure for ensuring compliance in the conduct of clinical studies at study sites.
- 17.4.4 For-cause audits may be performed in response to compliance concerns triggered by special incidents such as complaints by subjects and warnings by sponsors or regulatory authorities.

#### **17.5 Inspection by Regulatory Agencies**

- 17.5.1 Investigators and institutions may, as required by applicable legislative, accreditation or contractual requirements, be inspected by competent regulatory agencies including:
  - (a) The DOH, for institutions involved in clinical studies regulated in Hong Kong;
  - (b) The CFDA, for institutions accredited by the CFDA for conducting clinical studies targeting for registration of new drugs in mainland China; and
  - (c) Overseas regulatory agencies (e.g. U.S. FDA), for institutions involved in clinical studies from which the study data is used or will be used for submission to such regulatory agencies.

17.5.2 Investigators and institutions have the responsibilities to allow and facilitate inspections required by competent regulatory agencies according to applicable laws or regulations.

**17.6 Personal Data Protection in Monitoring, Auditing and Inspection**

17.6.1 Since monitoring, auditing and inspection activities usually involve disclosure of human subjects' identities and other personal data to monitors, auditors and inspectors, special attention should be paid by investigators and institutions on protection of subjects' personal data.

17.6.2 Investigators and institutions shall ensure that the human subjects are fully informed of the requirements to allow access to their personal data by monitors, auditors and inspectors for the purposes of monitoring, auditing and inspection, and that their express permissions are obtained through the informed consent process.

# 18. Risk Management

## 18.1 Risk Management at Study Sites

18.1.1 Clinical studies may be interventional or non-interventional. Interventional clinical studies may involve testing of investigational products, procedures or methods which have not been proven safe and effective, and hence may carry a higher degree of risk than normal medical care.

18.1.2 Additional risks associated with the conduct of clinical studies at study sites could be avoided or minimized by various risk management measures such as:

- (a) Initial and continuous ethics and scientific oversight;
- (b) Development and maintenance of and compliance with study site standard operating procedures;
- (c) Training of investigators and study site personnel.
- (d) Regular study monitoring;
- (e) Independent study audits; and
- (f) Additional safety monitoring by data and safety monitoring committees (“DSMC”).

18.1.3 Bodily injuries and deaths are among the most severe incidents that may occur in clinical studies in spite of the implementation of the aforesaid risk management measures. Such incidents may arise from or associated with:

- (a) Adverse effects or manufacturing defects of investigational products;
- (b) Wrongful or inappropriate design of study protocols;

- (c) Violation of study protocols; or
- (d) Negligence or malpractice of any participating party or personnel.

18.1.4 The costs, losses or damages arising from any claim in connection with any of the aforesaid incidents may be controlled by transfer of potential liabilities to outside parties through indemnity and/or insurance.

## **18.2 Indemnity for Sponsored Clinical Studies**

18.2.1 An indemnity is a promise by one party (i.e. indemnifier) to another party (i.e. indemnitee) to bear certain liabilities on occurrence of certain specified events.

18.2.2 In a sponsored clinical study, the sponsor is the party who develops and owns all the rights in its investigational product(s) and the study protocol. Obviously the sponsor has the responsibility to bear all the risks in association with its investigational product(s) and/or the study protocol and shall indemnify the HA, the institutions at where the study is conducted, the investigators and other study site personnel from any claim made based on any of the reasons referred to in sections 18.1.3(a) and 18.1.3(b) above.

18.2.3 The costs, losses or damages that may arise from the aforesaid claims may include:

- (a) Medical costs for providing medical treatments and care to the affected human subjects;
- (b) Legal and administrative costs for dealing with such claims; and
- (c) Financial compensations for the affected human subjects or their family members.

- 18.2.4 It is important to note that claims arising from the wrongdoings of investigators, study site personnel or institutions, including protocol violations and negligence/malpractice committed by any of them, do not fall under the scope of indemnity by sponsors, and hence the associated liabilities will have to be borne by investigators, study site personnel and/or institutions (as the case may be).
- 18.2.5 Since November 2001, the HA has adopted a standard indemnity policy for sponsored clinical studies. Any sponsor that wishes to carry out a clinical study in any HA institution is required to enter into a standard indemnity agreement. A fully executed indemnity agreement is a condition precedent to the validity of an approval for a study by a relevant CREC and the effectiveness of the study's CTA.
- 18.2.6 For investigator/institution-initiated clinical studies, however, the non-existence of external sponsors implies that an indemnity by outside parties is not available and therefore investigators and institutions have to rely on insurance as a risk transfer strategy.

### **18.3 Medical Malpractice Insurance**

- 18.3.1 Medical malpractice insurance is a kind of insurance covering claims arising from bodily injuries or deaths of patients or healthcare service users as a result of negligence or malpractice committed by medical institutions or medical personnel during performance of their medical duties.
- 18.3.2 A major characteristic of medical malpractice insurance is that it is triggered only by negligence or malpractice. As outlined in section 18.1.3, claims in connection with a clinical study may arise from the investigational product(s) or the study protocol,

which may have nothing to do with negligence or malpractice. It means that medical malpractice insurance may not be sufficient to cover the potential liabilities arising out of a clinical study, and hence coverage by separate clinical trial insurance may be needed.

#### **18.4 Clinical Trial Insurance**

18.4.1 Clinical trial insurance is a special kind of insurance offering coverage for liabilities for bodily injuries or deaths associated with the use of the investigational product(s) or the design of a study protocol in a clinical study.

18.4.2 The HA requires that every sponsored study has to be covered by a standard indemnity in accordance with the HA's requirements. Currently the HA does not require that a separate clinical trial insurance be arranged by the investigators and/or institutions participating in a sponsored clinical study.

18.4.3 With respect to investigator/institution-initiated studies, individual institutions and investigators should assess the underlying risks and arrange for suitable clinical trial insurance coverage as required. A CREC may, at its reasonable discretion, require an investigator to secure clinical trial insurance for covering a clinical study with higher than nominal clinical risk.

18.4.4 The exact clinical trial insurance coverage could be tailored to the specific conditions of each study and the specific needs of each investigator or institution. Investigators and institutions shall discuss with insurers to arrange insurance policies that are most suitable for their studies. Some important conditions that need to be considered include (but not limited to):

(a) Policy limits: The limits of indemnity provided by the

insurer – for any one claim and in aggregate under the policy.

- (b) Deductible or excess: The first specified amount of a claim which is not covered by the insurance and must be paid out of pocket by the insured party before the insurance covers the rest of the claim up to the policy limit.
- (c) Period of coverage: The period during which any claim under the insurance should be reported to the insurer in order to warrant a valid coverage.
- (d) Excluded events: Any specific event or circumstance that is excluded from the insurance coverage.
- (e) Availability of legal liability extension: An extended coverage which covers compensations and legal costs incurred from litigations or formal legal proceedings (rather than by settlement only).

18.4.5 In order to secure and maintain the validity of a clinical trial insurance, investigators need to submit updated study documents and information to the insurer, such as the updated study protocol, investigator’s brochure and informed consent forms (including any subsequent amendments of such documents), as well as the progress of human subject recruitment and the latest study status. Failure to provide accurate and updated information to the insurer may jeopardize the validity of an insurance coverage.

## **18.5 Reporting of Claims**

18.5.1 Investigators and institutions shall be responsible for reporting any claim or potential claim to the HALSD and/or the insurers (as applicable) as soon as possible following the receipt of a claim or awareness of a potential claim. Failure or delay in reporting a claim or potential claim may jeopardize the validity

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of the relevant indemnity or insurance coverage.

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