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New Licensing Regime on VASPs introduced with Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022

Simon Deane and Chris Wong

Hong Kong will introduce an amendment to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615; “**AMLO**”) to the Legislative Council (“**LegCo**”) on 6 July 2022, with the aim of establishing a licensing regime for virtual asset service providers (“**VASPs**”) and dealers in precious metals and stones (“**DPMS**”) in Hong Kong.

The two proposed licensing regimes are as follows:-

- 1) A licensing regime for VASPs. Persons carrying on a business of operating a virtual asset service will be considered a VASP and will be required to obtain a licence from the Securities and Futures Commission in Hong Kong. Currently, the only proposed “virtual asset service” is operating a virtual asset exchange. A virtual asset exchange is to be defined under the amendments to the AMLO as providing services through electronic facilities whereby offers to sell/purchase virtual assets are regularly made and accepted in a way that forms or results in a binding transaction, or where persons are regularly introduced or identified to other persons so that they can or can be reasonably expected to negotiate or conclude such purchases or sales of virtual assets, and where client money or client virtual assets comes into direct or indirect possession of the person providing the service. The proposed bill provides that the definition of a “virtual asset service” may be amended by the Secretary for Financial Services and Treasury by subsidiary legislation.

Under the proposed regime, only companies will be permitted to obtain such a licence. The responsible officers and licensed representatives of the VASP will need to be fit and proper persons to manage the VASP business and engage in the provision of the virtual asset service, respectively. Licensed VASPs will be expected to comply with a set of stringent regulatory requirements, including having adequate financial resources, risk management processes, policies, etc., as well as the AML/CTF requirements of the AMLO. The proposed bill also provides that the licensed VASP may only offer services to professional investors.

- 2) A registration regime for DPMS. DPMS will be defined as carrying on any activities related to (i) trading in, importing or exporting precious metals, stones or products, (ii) manufacturing, refining or carrying out any value-adding work on precious metals, stones, or products, (iii) issuing, redeeming, or trading in precious-asset-backed instruments, or (iv) acting as an intermediary for the above activities.

Under the proposed bill, there will be two categories of registration. Category A registrants will be restricted from engaging in any cash transactions with customers at or above HK\$120,000, and will not be subject to the requirements of the AMLO – the registration will be a simple filing process. Category B registrants will be registrants that engage in cash transactions with customers at or above HK\$120,000, and will be subject to fit and proper persons tests, and the requirements of the AMLO when they engage in any transactions above HK\$120,000.

The regulator of DPMS will be the Customs and Excise Department of Hong Kong, who will establish conditions of registration on the registrants on both categories.

The Amendment Bill and the introduction of the new regulatory regimes address two issues: (1) the gap in regulation of DPMS, which was highlighted in the recent report and assessment of Hong Kong's AML measures by the Financial Action Task Force; and (2) the growing risks in relation to virtual asset businesses – as has been seen in recent problems in the virtual asset industry globally, a lack of regulation presents real risks to ordinary investors and consumers, as well as risks of money laundering and terrorism financing. It is proposed that the Amendment Ordinance will come into effect on 1 January 2023, except for the provisions relating to the VASP regime, which will come into effect on 1 March 2023.

The Amendment Bill can be found [here](#), whilst the Legislative Council Brief can be found [here](#).

Money lenders note – Government proposes to lower usury rate caps by the end of 2022

Simon Deane and James Tong

It is an offence under the Money Lenders Ordinance (Cap. 163; “MLO”) to lend or offer to lend money at an effective rate of interest which exceeds 60% per annum. Further, a loan agreement where the effective interest rate exceeds 48% per annum is presumed to be extortionate and the court has power to reopen the transaction to do justice between the parties. These rates have been in effect since the MLO in its current form originally came into force in 1980 but the Government recently submitted a resolution to the Legislative Council to lower these usury interest rate caps from, respectively, 60% per annum to 48% per annum, and 48% per annum to 36% per annum.

The proposed reductions were introduced following consideration of the changes in the interest rate environment and money lending sector in Hong Kong since, as mentioned, the current two interest limits were set in 1980. For instance, the best lending rate for lenders in Hong Kong has significantly decreased from around 14% per annum in 1980 to around 5% per annum now. Typical annualised percentage rates charged by credit card issuing banks as at end-2021 were mostly in the range of about 33% to 41%. The number of licensed money lenders has also grown rapidly in the past decade. Therefore the Government sought to reduce the statutory interest rates in order to better protect borrowers. How the current inflationary environment will impact on these rate changes remains to be seen.

The proposal will be moved in the Legislative Council in July 2022 and, if passed, will come into force on 30 December 2022.

For more information on the Legislative Council Brief setting out the details of the proposal, please visit [here](#).

Hong Kong Monetary Authority's (HKMA) Guide to Authorisation

Simon Deane and Jennifer Lok

The HKMA has recently (on 23 March 2022) updated his Guide to Authorisation (the “**Guide**”) to reflect some earlier changes to his other guidance materials and codes. This therefore seems like an opportune time to provide a reminder about the purposes of the Guide which is a very helpful description of the HKMA’s approach to his supervisory role.

The Guide supplements and provides guidance upon the authorisation and supervision regime under the Banking Ordinance (Cap. 155; “**Ordinance**”). Both new applicants seeking approval to become authorised institutions or money brokers and existing authorised institutions and approved money brokers should, in addition to the requirements set out in the Banking Ordinance and other regulatory guidelines and codes of practice issued by the HKMA such as the Supervisory Policy Manual (“**SPM**”), also familiarise themselves with the Guide, as amended, supplemented and updated from time to time by the HKMA. Below is a summary of the topics covered by the Guide.

- **Chapter 2** and **Chapter 3** provide an overview of the authorisation regime and the legal and policy framework of the supervisory regime under the Ordinance. The HKMA is concerned with the overall business of an authorised institution and not only its banking or deposit-taking business, hence the HKMA is also the front-line regulator and undertakes significant roles in the supervision of other regulated activities such as securities and futures activities, insurance business and over-the-counter derivative activities carried on by an authorised institution under the Securities and Futures Ordinance (Cap.571) and Insurance Ordinance (Cap.41), in cooperation with other regulators such as the Securities and Futures Commission and the Insurance Authority.
- **Chapter 4** sets out the HKMA’s interpretation of each of the minimum authorisation criteria set out in the Seventh Schedule to the Ordinance. These authorisation criteria include, among others, the identity, fitness and propriety of directors, controllers, chief executives, executive officers and managers, the institution’s financial resources, ability to fulfil and maintain adequate liquidity, policies on control of large exposures, risk management capabilities, adequacy and effectiveness of accounting systems and systems of control, whether the institution has conducted its business with integrity, prudence and competence, and the adequacy of home supervision if an applicant is incorporated outside Hong Kong. Details of the HKMA’s expectations and supervisory approach in respect of the above criteria are further elaborated in the relevant modules of the SPM and code of practice. If any one or more of the criteria is not fulfilled, the HKMA must refuse the relevant application for authorisation. Further, the HKMA has general discretion to grant or refuse an application for authorisation, and will have regard to other matters such as prudential concerns and the HKMA’s statutory objectives when assessing an institution’s suitability for authorisation. The criteria for authorisation continue to apply after an institution has been authorised. The procedures for applying for authorisation or upgrading an existing authorisation are described in Chapter 8 of the Guide. Prospective applicants are encouraged to consult and discuss with the HKMA before submitting formal applications for authorisation.
- **Chapter 9** sets out specifically the principles which the HKMA will take into account in deciding whether to authorise “virtual banks”, i.e. banks that primarily deliver retail banking services through the internet or other electronic channels. In line with the HKMA’s established policy, he expects that a prospective virtual bank applicant will be held through a Hong Kong incorporated holding company, which holding company will be subject to HKMA’s supervisory conditions similar to those in the Seventh Schedule. Upon being authorised, virtual banks are generally subject to the same supervisory standards with suitable adaptations based on a risk-based and technology-neutral approach, including but not limited to the requirements described in this Chapter.
- **Chapter 5** deals with the HKMA’s interpretation of each of the grounds for revocation and suspension of authorisation set out in the Eighth Schedule to the Ordinance. The HKMA’s powers to revoke an authorisation become exercisable when any one of the grounds for revocation is established, but when exercising his discretionary powers of revocation and suspension, the HKMA will take into account the circumstances of the breach in each case, and more importantly, the primary need to maintain the stability of the banking system and to protect the interests of depositors and potential depositors of the institution.

- **Chapter 6** describes the HKMA's powers under section 52 of the Ordinance in respect of an authorised institution which is in financial difficulties or contravenes or fails to comply with its statutory obligations, including his power to appoint a Manager to manage the affairs, business and property of such an institution.
- **Chapter 7** explains the general statutory restrictions and the requirements for the HKMA's consent in relation to the use of banking names or descriptions for carrying on business in Hong Kong.
- **Chapter 10** focuses on the authorisation of money brokers and describes the legal framework, the HKMA's interpretation of the minimum approval criteria for money brokers set out in the Eleventh Schedule to the Ordinance and the grounds for revocation of approval of money brokers set out in the Twelfth Schedule to the Ordinance.

To access a full copy of the Guide, please click [here](#).

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