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Implementation Arrangements for the Lowering of Statutory Limits of Effective Rates of Interests under the Money Lenders Ordinance

Simon Deane and Natalie Chan

On 26 October 2022, the Legislative Council (“**LegCo**”) passed a resolution to approve the lowering of the statutory interest rate cap under the Money Lenders Ordinance (Cap. 163; “**MLO**”) from 60 per cent per annum to 48 per cent per annum under section 24 of the MLO. The threshold for the extortionate rate (which may trigger the reopening of relevant loan transactions by the court) under section 25 of the MLO was lowered from 48 per cent per annum to 36 per cent per annum. The amendments will take effect from 30 December 2022 with no retrospective effect.

Although the MLO does not apply to authorised institutions (“**AIs**”), AIs are indirectly subject to the revised interest rate caps pursuant to section 12.3 of the Code of Banking Practice (“**COBP**”) which applies in respect of AIs’ retail businesses and makes reference to the interest rate limits under the MLO. Section 12.3 provides that AIs should not charge interest rates to retail customers beyond the extortionate rate threshold or statutory limit unless they are able to justify the charging of such rates.

The Hong Kong Monetary Authority (“**HKMA**”) issued a circular on 27 October 2022 to set out his expectations of AIs concerning communications with bank customers in relation to the new rate limits and the timeline to fulfil the relevant notification requirements. AIs are also expected to ensure sufficient resources are deployed to handle enquiries from customers as necessary. For more details on the circular, please refer to this [link](#).

Passage of Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022

Simon Deane and Kelly Poon

The Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022 was passed on 7 December 2022. In particular, the amended Anti-Money Laundering and Counter-Terrorist Financing Ordinance has introduced (1) a licensing regime for virtual asset service providers and (2) a two-tier registration regime for dealers in precious metals and stones.

Miscellaneous amendments were also made to align with the latest international standards set by the Financial Action Task Force (“**FATF**”), including (i) an amendment of the definition of “politically exposed person” (“**PEP**”); (ii) the facilitation of a risk-based approach in determining the degree of customer due diligence (“**CDD**”) that former PEPs are subject to; (iii) supporting the use of technology by clarifying that a recognised digital identification system can be used for the purposes of CDD and satisfying the additional requirements where a customer is not physically present for identification purposes; and (iv) the clarification that a beneficial owner includes a trustee of a trust, a beneficiary and a class of beneficiaries of a trust entitled to a vested interest in the trust. The miscellaneous amendments aforementioned will come into operation on 1 June 2023.

The relevant HKMA circular can be found [here](#), and the Government press release can be found [here](#).

Updates to HKMA Supervisory Policy Manual modules

Simon Deane and Chris Wong

The HKMA has made several updates to three modules of his Supervisory Policy Manual (“**SPM**”).

- (i) SPM module “IC-7 – The Sharing and Use of Commercial Credit Data through a Credit Reference Agency” was updated on 16 November 2022. The minor amendments dealt with the introduction of the Commercial Data Interchange (“**CDI**”). Launched on 24 October 2022, the CDI is a key initiative of the HKMA’s Fintech 2025 strategy, and introduces new infrastructure for the sharing of data about SMEs held by public and private data providers to financial institutions in a secure and efficient manner. Initial data providers include Dun and Bradstreet (the commercial credit reference agency in Hong Kong) and Tradelink Electronic Commerce (an import-export-related platform for businesses).

Since the commercial credit reference agency’s database is now accessible via the CDI, the amendments to IC-7 set out the HKMA’s regulatory expectations for this access, including safeguards to protect the security of the data disclosed or obtained, proper utilization of information, etc.

- (ii) SPM module “CG-3 – Code of Conduct” was updated on 9 December 2022. Several changes and updates were made, including:-
 - a. Changes to conflict of interest policy requirements – stronger requirements are now in place to require staff of AIs to consider conflict of interest situations arising between the interests of the AI and the private interests of the staff member (which include the interests of relatives, personal friends or any other parties with whom the staff member has personal ties), including circumstances where the staff member is making private investments or taking up outside employment. Staff members are required to make a declaration if they become aware that they or their close family members have performed any role or taken any action that poses a risk of the staff member having a conflict of interest.
 - b. Expanded references to the Prevention of Bribery Ordinance (Cap. 201), including in relation to sections 8 and 9 of the ordinance, relating to bribery of public servants and corrupt transactions.
 - c. Updating requirements and guidelines in relation to internal control systems enforcing the Code of Conduct of AIs, including an expanded oversight role for senior management and incident reporting.

Minor amendments were also made to allow the use of group codes of conduct where an AI is incorporated outside of Hong Kong or is a part of an international banking group.

It should be noted that AIs are required to review their existing Codes of Conduct to ensure they comply with the changes, and to make all necessary changes by 1 July 2023.

- (iii) SPM module “SA-1 – Risk-based Supervisory Approach” was updated on 23 December 2022. Minor changes were made – on top of the existing eight inherent risks identified by the HKMA as a part of his risk-based supervisory approach (credit, market, interest rate, liquidity, operational, legal, reputation, and strategic), the HKMA has added emerging risks to account for new risks that may emerge now and in the future. In particular, the addition of emerging risks was to account for climate risk, an area which the HKMA has become focused on since his introduction of SPM module “GS-1 – Climate Risk Management” at the end of 2021.

The three circulars can be accessed below:-

[Supervisory Policy Manual \(“SPM”\): Module IC-7 “The Sharing and Use of Commercial Credit Data through a Credit Reference Agency”](#) (16 November 2022)

[Revised SPM CG-3 “Code of Conduct”](#) (9 December 2022)

[Supervisory Policy Manual \(SPM\): Revised Module SA-1 on “Risk-based Supervisory Approach”](#) (23 December 2022)

Project mBridge: Successful CBDC project for real-value cross-border payment and foreign exchange transactions

Simon Deane and Sally Lau

On 26 October 2022, the HKMA, together with the Bank for International Settlements Innovation Hub (BISIH) Hong Kong Centre, the Bank of Thailand, the Digital Currency Institute of the People’s Bank of China and the Central Bank of the United Arab Emirates, published a report entitled “Project mBridge: Connecting economies through CBDC” (“**Report**”).

Project mBridge (“**Project**”) experiments with cross-border payments using a common platform based on distributed ledger technology (DLT) upon which multiple central banks can issue and exchange their respective central bank digital currencies (multi-CBDCs). The Report delivers the results and key lessons learnt from the pilot conducted under the Project.

Earlier this year, 20 commercial banks from Hong Kong and three other jurisdictions conducted payment and foreign exchange (FX) payment versus payment (PvP) transactions on behalf of their corporate clients using the mBridge platform. The pilot programme advanced multi-CBDC experimentation by settling real value transactions directly on the platform and on behalf of corporate customers, with over US\$12 million of CBDCs issued onto the platform.

The Project will continue the technology-build and testing. The HKMA and the rest of the project team will continue to work towards developing the mBridge platform into a Minimum Viable Product and ultimately a production-ready system.

To view HKMA Press Release, please see [here](#). To access a full copy of the Report, please see [here](#).

Guidance on Anti-DDoS Protection

Simon Deane and Kelly Poon

In response to the growing incidence and sophistication of distributed denial-of-service (“**DDoS**”) attacks, the HKMA issued a circular on 25 November 2022 to provide AIs with additional guidance (the “**Guidance**”) on this specific area of cyber security. With reference to the findings of a round of thematic reviews completed recently by the HKMA to assess the effectiveness of the anti-DDoS protective measures maintained by AIs, the Guidance is grouped under four key principles:

- (i) **Undertaking regular risk assessment and vulnerability management** – AIs should monitor the latest trends, tactics and techniques of DDoS attacks. They should have in place a robust mechanism regularly to identify, assess and mitigate vulnerabilities in their networks and systems which may be susceptible to new forms of DDoS attacks, and critically assess whether their anti-DDoS defence mechanisms remain adequate.

- (ii) **Designing the architecture of anti-DDoS controls properly** – AIs should properly configure and regularly review the architecture of their anti-DDoS controls to provide comprehensive protection against DDoS attacks. The protective measures should cover both customer-facing channels and key components that support an institution’s operations.
- (iii) **Maintaining effective governance over service providers and putting in place robust contingency arrangements** - AIs should identify key third parties which are critical to the availability of their internet-facing services and are potential targets of DDoS attacks (e.g. DNS and internet service providers). AIs should maintain an effective mechanism regularly to evaluate the key third parties’ cyber defence capability and develop appropriate contingency arrangements to deal with potential disruptions.
- (iv) **Establishing proper incident response procedures and conducting regular rehearsal exercises** - AIs should establish end-to-end incident response and escalation procedures, covering, among others, actions required of anti-DDoS service providers (e.g. timely identification of DDoS attempts, adjustment in relevant thresholds and rules for responding to DDoS attacks).

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

The Implementation of Basel III Final Reform Package

Simon Deane and Kelly Poon

Taking into account views from the industry about competing priorities and resource constraints amid challenges associated with the Covid-19 pandemic, the HKMA issued a circular to notify AIs of the adjustments to its policy intent for implementing the revised capital standards under the Basel III final reform package (the “**package**”) on 25 November 2022.

The implementation timeline will be deferred as follows, to allow more time for the industry to prepare for the necessary system changes for the adoption and the regulatory data reporting standards:

- (i) the implementation date of those standards associated with credit risk, operational risk, the output floor and the leverage ratio will be adjusted from 1 July 2023 to a date no earlier than 1 January 2024; and
- (ii) the new standards for market risk and CVA risk will take full effect on a date no earlier than 1 January 2024, while the reporting-only period for these two standards will be shifted from 1 July 2023 to 1 January 2024.

To align more closely with the Basel requirements, the HKMA has also incorporated adjustments to its policy proposals, which include (1) for the output floor phase-in arrangement to follow more closely that of the package, having regard to the arrangements adopted by other major jurisdictions; and (2) for the minimum LTV-based risk-weight of residential real estate exposures under the revised standardised approach to follow that of the package.

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

Development of the Personal Data (Privacy) Ordinance

Simon Deane and Crystal Choi

On 28 October 2022, at a Policy Briefing meeting of the LegCo Panel on Constitutional Affairs, the Secretary for Constitutional and Mainland Affairs (“**SCMA**”), Mr Erick TSANG Kwok-wai, responded to a member’s question on amending the Personal Data (Privacy) Ordinance (“**PDPO**”) to cope with the development of digital economy and e-Government. Mr Tsang said that the Government had a comprehensive vision to meet the challenges arising from technological developments and would review relevant developments and update the PDPO to align it with global privacy protection trends. He said the Government would also strike a balance between privacy protection and economic development and consult the Legislative Council on the appropriate amendments in due course.

Please click [here](#) for the paper provided by the Constitutional and Mainland Affairs Bureau to the LegCo Panel on Constitutional Affairs. Please click [here](#) for the opening remarks of the SCMA at the Policy Briefing meeting of the LegCo Panel on Constitutional Affairs (Chinese only).

Want to know more?

Teresa Lau
Partner
teresa.lau@deacons.com
+852 2825 9701

Erica Wong
Partner
erica.wong@deacons.com
+852 2825 9418

Simon Deane
Consultant
simon.deane@deacons.com
+852 2825 9209

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