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Proposed Legislative Amendments to the Banking Ordinance

Simon Deane and Sally Lau

The Panel on Financial Affairs of the Legislative Council met on 7 October 2024 to consider LC Paper No. CB(1)1298/2024(02), briefing LegCo members on (a) the Government's plans to amend the Banking Ordinance ("**BO**") and (b) two of the proposed legislative amendments to the BO, namely (i) simplifying the three-tier banking system into two-tiers; and (ii) allowing the sharing of information among authorized institutions ("**AIs**") about customers, accounts and transactions for the purposes of preventing and detecting financial crime.

For the agenda, please see [here](#). To access a full copy of LC Paper No. CB(1)1298/2024(02), please see [here](#).

The Hong Kong Monetary Authority ("**HKMA**") has conducted a public consultation on the aforementioned two BO enhancement proposals.

1. Simplification of the Three-tier Banking System

On 5 August 2024, the HKMA published the conclusions on the public consultation relating to the review of the three-tier banking system.

The current banking system in Hong Kong has three-tiers, comprising of licensed banks ("**LBs**"), restricted licence banks ("**RLBs**") and deposit-taking companies ("**DTCs**"). The HKMA launched a three-month public consultation on 26 June 2023. In the consultation, the HKMA proposed to merge DTCs into the second-tier institutions, i.e. RLBs, with a transition period of five years, with the current requirements relating to RLBs in respect of minimum capital (i.e. HK\$100 million) and minimum deposit size (i.e. HK\$500,000) to be extended to DTCs.

Having considered the feedback from the consultation, the HKMA has introduced the following new parameters to the proposal with a view to streamlining the transition and minimising the impact on existing customers of DTCs:

- a. the HKMA intends to adopt an arrangement whereby, without the need for them to submit fresh licence applications, existing DTCs will be converted into RLBs, upon demonstrating to the satisfaction of the HKMA that they have met the minimum capital requirement of an RLB before the end of the 5-year transition period; and

- b. converted RLBs (i.e. ex-DTCs) to continue to hold and renew or roll-over outstanding deposits taken before the upgrade, up to the end of the 5-year transition period, subject to the pre-existing deposit size and maturity requirements applicable to DTCs of HK\$100,000 and 3 months respectively.

For the press release, please see [here](#). To access a full copy of the consultation paper, please see [here](#).

2. Information Sharing among AIs for Crime Prevention and Detection

The HKMA issued a consultation document on 23 January 2024 to seek views from the banking sector and the public regarding the proposal to enable AIs to engage in the sharing of customer account information. (Please see [here](#) for our previous article). The consultation closed on 29 March 2024 and the proposal received general support from respondents.

To combat financial crime, including fraud, money laundering (“ML”), terrorist financing (“TF”) and proliferation financing (“PF”), it has been proposed that:

- a. AIs be permitted to share information, as requested by another AI or on an AI’s own initiative, where:
 - (i) a disclosing/requesting AI has observed activity that it has reasonable grounds to believe may indicate possible involvement in ML/TF/PF;
 - (ii) a disclosing AI has reasonable grounds to believe that the information will assist receiving AI(s) in detecting or preventing ML/TF/PF; and
 - (iii) a requesting AI has reasonable grounds to believe that AI(s) to which the request is sent have information likely to assist in detecting and preventing ML/TF/PF;
- b. legal protection be provided to AIs sharing information (i.e. sharing will not be considered a breach of confidentiality requirements under the law, rules of conduct or in contracts), although AIs will be required to act with reasonable care and in good faith;
- c. to the HKMA be empowered to designate platforms to be used for sharing, and to permit AIs to access, and maintain a database; and
- d. AIs be obliged to protect confidentiality of information received, except for necessary onward disclosure, and maintain adequate systems and controls.

MOU on Cross-Boundary Linkage of Payment Systems between the Mainland and Hong Kong

Simon Deane and Martha Lu

A series of policy measures, intended to deepen financial co-operation between the Mainland and Hong Kong, were jointly announced by the HKMA and the People’s Bank of China (“PBOC”) on 24 January 2024. Some of the policy measures have already been implemented and the HKMA continues to work on the other measures and initiatives, including the cooperative framework for cross-boundary payment linkage.

On 2 August 2024, the PBOC and the HKMA entered into a Memorandum of Understanding on Cross-Boundary Linkage of Payment Systems between the Mainland and Hong Kong. As stated by the HKMA in June 2024, the cooperative framework is intended to provide a safe, efficient and convenient means for cross-boundary payment and settlement, facilitating economic activity and flows of people between the two places.

Following a meeting of the top executives of the HKMA and PBOC on 2 August 2024, it was announced that the policy measures and initiatives on market connectivity and financial facilitation will continue to be part of the HKMA’s key priorities in the future.

The press release can be found [here](#).

SPM: Revised Module CA-D-1 “Guideline on the Application of the Banking (Disclosure) Rules”

Simon Deane and Phyllis Leung

On 6 August 2024, in the light of the implementation of the Banking (Disclosure) (Amendment) Rules 2023 (“**BDAR**”), the HKMA published revisions to the SPM module CA-D-1 “Guideline on the Application of the Banking (Disclosure) Rules” (“**Guidance**”) which will take effect on the commencement date of the BDAR, intended for 1 January 2025.

Notably, the Guidance has the following revisions:

- new guidance on the first reporting period subject to the new or revised quarterly, semi-annual or annual disclosure requirements for all authorised institutions
- the materiality test for disclosure should take into account the materiality concept as set out in the HKFRS
- new guidance on the disclosure requirements in respect of the credit exposures falling within the internal ratings-based (“**IRB**”) adoption classes

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

Implementation of first phase of enhancement measures of Deposit Protection Scheme

Simon Deane and Martha Lu

The first phase of the enhancement measures of the Deposit Protection Scheme (“**DPS**”) came into effect on 1 October 2024, following the gazettal of the DPS (Amendment) Ordinance 2024 on 12 July 2024. (Please see [here](#) for our previous article). As mentioned, the Ordinance seeks to enhance the DPS to strengthen protection for depositors, maintain banking stability and keep up with international standards and the latest developments of Hong Kong.

The enhancement measures that came into effect on 1 October 2024 include:

- raising the deposit protection limit from HK\$500,000 to HK\$800,000 per depositor per bank;
- refining the levy system to enable the DPS Fund underpinning the DPS to reach the target fund size within a reasonable timeframe under the increased protection limit; and
- streamlining the negative disclosure requirement on non-protected deposit transactions for private banking customers.

The second phase of the enhancement measures will come into effect on 1 January 2025. The measures include providing enhanced coverage to affected depositors upon a bank merger or acquisition and requiring Scheme members to display the DPS membership sign on their electronic banking platforms.

For the press release, please see [here](#).

Want to know more?

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