

Hong Kong Corporate Insights

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Hogan
Lovells

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Equity Capital Markets

Updated listing decisions and revised checklists and forms as a result of the changes in the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Ltd. (Listing Rules) on codification of general waivers and principles relating to IPOs and listed issuers

As a result of Listing Rules changes on codification of general waivers and principles relating to initial public offerings (IPOs) and listed issuers, the Stock Exchange of Hong Kong Ltd. (SEHK) has updated two Listing Decisions:

1. In guidance letter [HKEX-LD9-2011](#), which provides whether SEHK would waive the requirement on the exercise price of share options for a share option scheme involving issue of new shares, a note was added to highlight the addition of a new rule – Rule 19A.39C of Listing Rules – which codifies the waiver of the exercise price requirement for issuers dually listed on SEHK and a People's Republic of China (PRC) exchange.
2. In guidance letter [HKEX-LD25-2012](#), which provides whether a company's proposal to issue rights shares under a general mandate would comply with Rules 13.36 and 19A.38 of the Listing Rules, it was noted that Rule 19A.38 of the Listing Rules was amended to include the exemption for bonus or capitalization issues by a PRC issuer from shareholders' approvals in general meetings and separate class meetings. The Listing Rule amendments would not change the analysis and conclusion in the case.

SEHK has also revised the below checklists and forms:

- CF025G: Basic Qualifications for Listing of a New Class of Equity Securities (GEM).
- FF201G: Appendix 5 – forms relating to listing – form B – Application form – Equity securities (of an issuer part of whose share capital is already listed).

- FF003G: Appendix 5 – forms relating to listing – form F – GEM – Company Information Sheet.
- DU004G: Director's and Supervisor's form B – Director's Declaration, Undertaking and Acknowledgement (PRC Issuer).
- DU005G: Director's and Supervisor's form C – Supervisor's declaration and undertaking and acknowledgement in respect of an issuer incorporated in the PRC.

HKEx, 30 September 2020

SEHK publishes Listing Decision (LD128-2020) on whether a company can seek a one-off advance mandate from its shareholders to issue new shares under Rule 17.39 of the GEM Rules

The facts of the case are as follows: An anonymous GEM issuer (Company X) enters into a share subscription facility arrangement (Facility) with an independent investment fund. Company X may request the fund to subscribe for new shares in Company X over a three-year period. The new shares would be issued at a discount to the company's share price over the subsequent trading days following the request. The maximum number of shares issuable under the Facility was about two times Company X's existing issued shares. Company X proposed to seek a prior mandate (Prior Mandate) from its shareholders on a one-off basis to issue new shares under the Facility over the next three years under Rule 17.39 of the GEM Rules. Company X claims that the Facility would allow it to have control throughout the period as to when and how to draw down the Facility under specified limits.

The rationale behind Rule 17.39 of the GEM Rules is that a shareholder should be able to protect his proportion of total equity by having the opportunity to subscribe for all new issues of equity securities. This

preemptive right may be waived by shareholders themselves on a general basis but only within the limits of Rules 17.41 and 17.42 of the GEM Rules, which describe a general mandate and allow share issuance subject to limits on the number of new shares and other restrictions such as price limits. In this case, the Prior Mandate allows Company X to issue new shares of whatever size and issue price under the Facility. However, such Prior Mandate did not meet the size and price limits set out in Rules 17.41(2) and 17.42B of the GEM Rules, and thus Company X cannot seek this Prior Mandate for the Facility on a one off basis.

The takeaway is that SEHK would not grant listing approval for issuance of new shares if the mandate is in substance a "general" one and yet does not meet the requirements set out in Rules 17.41(2) and 17.42B of the GEM Rules. Any issuance of new shares which exceeds the limits of Rule 17.41(2) of the GEM Rules should be approved by shareholders on each occasion of share issuance under Rule 17.39 of the GEM Rules. Company X subsequently announced that it would issue new shares under the Facility using a general mandate available at the time of each issuance.

Click [here](#) to view the Listing Decision.

HKEx, 4 September 2020

SEHK publishes Listing Decision (LD129-2020) on whether a company's proposal to grant options to a discretionary trust under a share option scheme complies with Chapter 17 of the Listing Rules

In this case, a Main Board issuer (Company A) proposed to adopt a new share option scheme, the participants of which would include (i) its employees; and (ii) an independently administered discretionary trust (the Trust) whose beneficiaries were its employees. The

proposal provides that Company A would grant share options to the Trust, which would be: (1) reserved for future allocations to beneficiaries, or (2) earmarked to specific beneficiaries to be identified by its board of directors from time to time. For the beneficiaries from category (2), Company A would inform them of the number of options allocated to them and the applicable vesting conditions. If any options granted to the trust were not eventually vested for the benefit of any such beneficiaries, the trustee would continue to hold the unvested options for future allocations to other beneficiaries.

Rule 17.01 of the Listing Rules provides that a "participant" of a share option scheme includes any discretionary object of a participant which is a discretionary trust. In other words, any grant of options to the trust must meet the requirements of Chapter 17 of the Listing Rules as if it were a grant to the beneficiaries directly.

In this case, share options granted to the trust could be further allocated to beneficiaries to be identified by the board of directors from time to time. The proposal did not meet the requirements of Chapter 17 of the Listing Rules as the participants (for the benefit of whom the options were granted) were not specified at the time of grant. SEHK is of the view that the trust arrangement could be used to circumvent Rule 17.03(9) of the Listing Rules as the exercise price fixed at the time of grant to the trust could be lower than the market price of the shares when the options were eventually allocated to the specific beneficiaries. It would also contravene Rule 17.03(17) of the Listing Rules, which prohibits any transfer of options to other persons. Therefore, the proposed discretionary Trust arrangement for new share option scheme did not comply with Chapter 17 of the Listing Rules.

Click [here](#) to view the Listing Decision.

HKEx, 4 September 2020

The Listing Committee of SEHK (Listing Committee) censures Sanai Health Industry Group Co. Ltd. (Stock code: 1889) and criticizes its directors for failure to comply with its financial reporting obligations

The Listing Committee conducted a hearing on 22 June 2020 into the conduct of Sanai Health Industry Group Co. Ltd. (Sanai); Mr. Chen Cheng Qing (Mr. Chen), its executive director; Mr. Zhang Rong Qing (Mr. Zhang), its executive director; Ms. Hung Hoi Lan (Ms. Hung), its former executive director; and Mr. Wang Zi Hao (Mr. Wang), its independent non-executive director and chairman of its audit committee (collectively as the Relevant Directors) in relation to their obligations under the Listing Rules and the Declarations and Undertakings with regard to Directors given to SEHK in the form set out in Appendix 5B to the Listing Rules (Undertakings). Sanai was found to have breached the Listing Rules and the relevant directors breached their respective Undertakings, and failed to implement and maintain effective internal controls.

Sanai was late in publishing its preliminary results in financial years 2015 and 2016, and has received two warning letters from the SEHK Listing Division. Mr. Chen and Ms. Hung acknowledge receipt of the second warning letter at the time. Sanai was late in publishing its annual results in financial year 2017 (2017 Delay) (published on 23 April 2018 when deadline was 31 March 2018) and claimed that it needed more time to resolve audit issues for the 2017 Delay in 2017. Each of the delays led to suspension of trading of its shares. Sanai was late again in publishing its annual results for financial year ended 31 December on 1 April 2019 with a delay of one day, which did not result in trade suspension.

The Listing Committee found that Sanai has breached Rule 13.49(1) of the Listing Rules as a result of the 2017 Delay. The Listing Committee also found that Sanai did not have adequate internal controls with respect to compliance with Rule 13.49(1) of the Listing Rules, which contributed to Sanai's breach. For example, Sanai's office manual on financial and accounting management was over-generalized and had not been revised since 2015. The monthly management accounts of Sanai's operating subsidiaries were only reviewed by department heads and not to any of the Relevant Directors. There was also no system in place to ensure any material issues raised by auditors will be brought to the Relevant Directors' or senior management's attention for discussion of possible solutions.

The Listing Committee concluded that, by failing to use their best endeavors to procure Sanai to comply with the financial reporting obligations and to fix the relevant internal control deficiencies, the relevant directors have breached their respective Undertakings. The Listing Committee took the view that the relevant directors should have paid attention to Sanai's affairs not only at formal meetings but take active interest in them, obtain a general understanding of its business, and take steps expeditiously to avoid the 2017 Delay. Whilst delegation of their duties is permissible, it cannot absolve the relevant directors from their duties to ensure that Sanai complies with its financial reporting obligations. With regards to the audit issues, the relevant directors should have: (i) taken proactive steps to closely monitor Sanai's financial position and the audit progress; (ii) made enquiry with the company secretary about Sanai's financial information at the early stage, and (iii) regularly liaised with the auditors on issues arising from the audit. Mr. Chen and Ms. Hung, who acknowledged the receipt of the previous warning letters, should have: (i) reviewed Sanai's Listing Rules

noncompliance history; (ii) reviewed Sanai's internal control system governing its financial and accounting procedures; and (iii) ensured that the financial 2017 audit would be dealt with expeditiously and that annual results would have been published on time.

The Listing Committee highlighted its regulatory concerns as follows: (1) Securities listed on SEHK should be continuously traded except in exceptional circumstances. Trading suspensions due to delays in financial reporting deny reasonable access to the market and prevent its proper functioning; (2) such delays prejudice the right of the investing public to receive timely information for the purposes of making informed investment decisions; (3) directors must take previous

warning and guidance from SEHK seriously and develop and implement systems and controls to prevent the recurrence of similar events.

The Listing Committee therefore censured Sanai and criticized the relevant directors for their breaches. The Listing Committee further directed: (i) Sanai to retain an independent professional adviser to review its internal controls and implement the adviser's recommendations; and (ii) the relevant directors to attend training on Listing Rules compliance and director's duties

Click [here](#) to view the full article.

HKEx, 3 September 2020

Financial Services Regulation

Findings of Mystery Shopping Programme (MSP) on Selling Practices of Authorized Institutions (AIs) in respect of investment and insurance products

The Hong Kong Monetary Authority (HKMA) released a report summarizing the findings and good practices of the MSP that test checked the selling practices in respect of investment and insurance products by AIs. It was found that in respect of the sale of investment products, the AIs were generally in compliance with the Know-Your-Customer (KYC) procedures, suitability assessment and implementation of additional safeguards for less sophisticated customers (including pre-investment cooling-off period), save for some isolated samples. As regards the sale of insurance products, while the AIs generally complied with the relevant requirements, there was room for improvement in areas like KYC procedures, suitability assessment, and disclosure of product features and risks.

Click [here](#) to view the HKMA circular and [here](#) to view the report on the findings of MSP.

HKMA, 30 September 2020

Anti-Money Laundering and Counter-Financing of Terrorism (AML/CFT) Surveillance Capability Enhancement Project (AMLS Project)

The HKMA issued circulars informing stored value facilities (SVF) licensees and AIs the implementation of the AMLS Project, through which the HKMA is strengthening the use of data and Supervisory Technology (Suptech) in its risk-based AML/CFT supervision. The AMLS Project is one of the initiatives under the HKMA's Digitalization Program to respond to the risks and opportunities resulting from new and emerging technologies, which are driving changes across the financial services landscape.

HKMA intends to increase its engagement and data collection, making better use of data to provide more forward-looking assessment of risks, in light of rapid changes in digital activities. At the same time, HKMA will be using various Suptech tools to help improve and streamline work processes, increase accuracy, and enhance interface with the industry.

Click [here](#) to view the HKMA circular to SVF licensees and [here](#) to view the HKMA circular to AIs.

Click [here](#) to view the Annex to the circulars.

HKMA, 29 September 2020

Circular on the provision of trade documents to clients by access through intermediaries' websites

The Securities and Futures Commission (SFC) issued a circular that provides updated guidance on the provision of specified documents to clients by access through intermediaries' websites (access service) for complying with the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules (CNR).

The updated guidance aims to:

- Introduce new ways in which consent to the access service could be obtained from new and existing clients.
- Provide further guidance on the disclosure of access arrangements, which assists clients in giving informed consent.
- Clarify that other forms of effective electronic communications, in addition to email, may be used for notifying clients of the posting of trade documents on the website.
- Extend the minimum online retrieval period to two years for monthly

statements of account and three months for other trade documents.

Intermediaries which currently provide access service for the purpose of complying with the CNR should align the minimum online retrieval period of their posted trade documents with those specified in the Annex to the circular within one year from the date of the circular.

Click [here](#) to view the SFC circular and [here](#) to view the Annex to the circular.

SFC, 29 September 2020

Circular on the electronic dissemination of investment product documents

The Securities and Futures Commission (SFC) issued guidance on the post-sale dissemination of documents in electronic form to issuers of investment products authorized by SFC and intermediaries who hold investment products on behalf of their clients. It provides for transitional arrangements and guidance notes for investors currently receiving paper documents, and also reminded issuers and intermediaries of the relevant general principles, such as:

- Sending a printed notice to investors at least one month before adopting the e-dissemination arrangement which should provide information necessary to enable investors to understand the e-dissemination arrangement, how the e-dissemination arrangement might affect investors' rights or interests, and the procedures for investors who wish to change the means of delivery.
- Requiring investors to be entitled to receive the documents free of charge in one means of their choice, either in paper form or via an electronic means specified by the issuer or intermediary.

- Putting in place systems and controls to detect and rectify any unsuccessful electronic dissemination to investors, where practicable.

Click [here](#) to view the SFC circular.

IA, 29 September 2020

The Insurance Authority (IA) and SFC sign new Memorandum of Understanding (MoU)

The IA and SFC entered into a new MoU following the introduction of the direct regulatory regime of insurance intermediaries, which replaces the previous MoU signed in 2005. The new MoU covers referral of cases for attention, joint inspections and investigations, and sharing of information pertaining to products and relevant entities or key persons. It aims to enhance the effectiveness for both IA and SFC in discharging their regulatory responsibilities.

Click [here](#) to view the IA press release and [here](#) to view the MoU.

IA, 28 September 2020

Remote onboarding of corporate customers

The HKMA issued a circular that reflects the regulatory expectations in relation to remote onboarding of corporate customers set out in the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO) and the Guideline on AML/CFT (For AIs) (AML/CFT Guideline).

Customer due diligence (CDD) is more extensive for business relationships with corporates, as these are generally established through representative(s) with appropriate authority to act on behalf of the corporate. However, the AMLO and the AML/CFT Guideline provide flexibility for AIs to onboard corporate customers remotely by undertaking CDD using third-party

intermediaries to conduct CDD on behalf of an AI, use independent and appropriate person to certify identification documents and so forth. Technology is increasingly being used to enhance the process of onboarding corporate customers; where used responsibly, it could help AIs manage risks more effectively and efficiently.

Click [here](#) to view the HKMA circular.

SFC, 24 September 2020

The Professional Insurance Brokers Association (PIBA) updated the Financial Needs Analysis (FNA) Form

The FNA is a process during which an authorized insurer or a licensed insurance intermediary collects relevant and sufficient information from a customer so that the authorized insurer or licensed insurance intermediary can properly assess the circumstances of the customer before making any recommendation in respect of certain types of life insurance policies to the customer. The PIBA created the FNA form in 2015 to suit for this purpose for insurance brokers.

The PIBA made changes on the FNA to satisfy the evolved requirements under the Guideline of FNA (GL30) published by the IA. The revamped PIBA FNA version PIBA-FNA-2020-001 is enclosed with the circular and PIBA aims to get all main life insurers' approval to use the revamped FNA form as their in-house FNA.

Click [here](#) to view the PIBA circular and the attached updated FNA form.

PIBA, 23 September 2020

Guideline on Medical Insurance Business (GL31) effected on 23 September 2020

GL31 aims to provide guidance on the minimum standards which authorized

insurers and licensed insurance intermediaries are expected to meet in order to ensure fair treatment of customers is applied across all aspects of medical insurance business.

GL31 applies to all medical insurance products within the definition of "medical insurance business." Majority of the requirements in GL31 are applicable to both individual and group medical insurance policies based on the principle of fair treatment of customers. Commitment to the fair treatment of customers should be demonstrated by putting in place measures to encourage attitudes and behavior of the insurer's staff and licensed insurance intermediaries to consider matters from the customer's viewpoint.

Authorized insurers and licensed insurance intermediaries have an obligation to collect adequate information to place themselves in a position whereby they can perform reasonable assessments before making any insurance recommendations. They have to comply with the requirements of GL31 regardless of the distribution channels through which they sell medical insurance products.

Click [here](#) to view the SFC circular and [here](#) to view the SFC report.

SFC, 23 September 2020

Circular providing Interpretation Notes relating to Guideline on Offering of Gifts (GL25) and the Guideline on Long Term Insurance Policy Replacement (GL27)

Interpretation Notes relating to GL25 explained the meaning of fees, and what constitutes discount and rebate of premiums. It further clarified GL25's scope of application, as well as the criteria that authorized insurers or licensed insurance intermediaries should consider in performing a reasonable assessment on the offering of gifts to customers. It also expanded on what premium

rebates and commission rebates cover, and how authorized insurers can inform customers of these rebates. Additionally, it explained the requirements for "robust internal procedures and controls" under GL25 and gave details of how the record keeping requirement can be complied with.

Interpretation Notes relating to GL27 clarified the scope of application of GL27 to include life insurance policies that combine long term business and additional business of the nature specified in Part three of Schedule one to the Insurance Ordinance. It reminded authorized insurers and authorized institutions to provide the definition of "policy replacement" as well as the Important Facts Statement-Policy Replacement (IFS-PR) for customers' reference, and that authorized insurers are not allowed to modify the IFS-PR. It further explained the measures that licensed insurance intermediaries should take to ascertain whether or not the customer is purchasing the life insurance policy as a policy replacement.

Click [here](#) to view the IA circular.

Click [here](#) to view the Interpretation Notes for GL25 and [here](#) to view the Interpretation Notes for GL27.

IA, 22 September 2020

Amendments to Guideline on AML/CFT (for SVF licensees)

The HKMA has published in the Gazette on 18 September 2020 the revised AML/CFT Guideline for SVF licensees in accordance with section 54(1A)(b) of the Payment Systems and Stored Value Facilities Ordinance (Cap.584). Among other things, amendments to the AML/CFT Guideline for SVF licensees include:

- Replacing the existing "streamlined approach" to CDD with a "tiered approach," featuring account limits and

different functions for SVF products depending on whether or not the customer's identity has been verified and subject to the customer's choice. Consistent with the risk-based approach, products with a lower functionality and risk, such as domestic payments for goods and services, will remain available to unverified customers (i.e., those for whom no CDD is required) and options are also available for preexisting customers.

- Providing guidance to facilitate adoption by SVF licensees of technology solutions for remote customer onboarding, articulating the principles of identity authentication, and identity matching.

Click [here](#) to view the HKMA circular and [here](#) to view the revised AML/CFT Guideline for SVF licensees.

HKMA, 18 September 2020

SFC launches consultation on AML/CFT guidelines

SFC on 18 September 2020 launched a three-month consultation on proposals to amend its AML/CFT guidelines.

The proposed amendments would facilitate the adoption of a risk-based approach to AML/CFT measures by the securities industry. They address some areas for enhancement identified in the latest Mutual Evaluation Report of Hong Kong published by the Financial Action Task Force. The amendments also include additional measures which would help mitigate risks associated with business arrangements such as cross-border correspondent relationships.

Click [here](#) to view the SFC news and [here](#) to view the consultation paper.

SFC, 18 September 2020

Changes to the Open-ended Fund Companies (OFC) regime take effect

The SFC announced on 11 September 2020 that amendments to the code on OFC in Hong Kong are no longer subject to investment restrictions and the eligibility requirements for OFC custodians have been expanded.

The proposal to allow licensed or registered securities brokers to act as custodians for private OFCs, and to introduce a re-domiciliation of overseas corporate funds to Hong Kong and to enable overseas corporate funds to re-domicile to Hong Kong will take immediate effect upon completion of the legislative process.

The SFC issued a circular to the industry on the implementation of the revised OFC regime. Existing private OFC custodians are allowed a six-month transition period from 11 September 2020 to ensure compliance with new safekeeping requirements.

Click [here](#) to view the SFC news and [here](#) to view the SFC circular.

SFC, 11 September 2020

Revised Supervisory Policy Manual (SPM) CR-G-14

The revised version of the SPM module "Non-centrally Cleared OTC Derivatives Transactions – Margin and Other Risk Mitigation Standards" was issued by notice in the Gazette on 11 September 2020 as a statutory guideline under section 7(3) of the Banking Ordinance (Cap.155).

The changes incorporated in the revised SPM module are mainly to:

- Revise the phase-in schedule of initial margin requirements according to the announcement made by the Basel Committee on Banking Supervision and the International Organization of Securities Commissions in April 2020.

- Defer the remaining implementation phases of the risk mitigation standards (RMS) to align with the updated initial margin implementation phase-in schedule.
- Extend the exemption of non-centrally cleared single-stock options, equity basket options and equity index options from the margin requirements.
- Provide clarification on the documentation, reporting, and notification requirements for AIs adopting substituted compliance.
- Update the list of WGMR1 member jurisdictions deemed comparable under the HKMA's margin requirements and RMS.
- Clarify that genuine amendments made to existing derivatives contracts to give effect to benchmark reforms will not be considered as new contracts subject to the margin requirements.
- Introduce a new guidance on AIs' derivatives transactions with leasing entities that are part of manufacturing groups.
- Update the guidance in relation to valuation with counterparties, portfolio reconciliation, dispute resolution, monitoring of model performance, as well as collateral eligibility to enhance the consistency in implementing the margin requirements and RMS.

Click [here](#) to view the HKMA circular and [here](#) to view SPM CR-G-14.

HKMA, 11 September 2020

Commencement of operation of the Companies (Fees) (Amendment) Regulation 2020 (Amendment Regulation)

With a view to encourage the wider use of the Companies Registry's (CR) electronic services, the CR proposed to reduce the fees payable in relation to incorporation of companies, including registration of non-Hong Kong companies, through electronic means by 10 percent. The Amendment Regulation amends the Companies (Fees) Regulation (Cap.622K) to effect the proposed waiver and reduction of fees.

Click [here](#) to view the CR circular.

CR, 10 September 2020

Frequently Asked Questions (FAQ) on Corporate Professional Investor (CPI) Assessment

Under paragraph 15 of the code of Conduct for Persons Licensed by or Registered with the SFC (the code), an intermediary is required to, among other things, assess whether a CPI meets certain criteria before the intermediary can be exempted from certain code requirements when dealing with the CPI in relation to relevant products or markets. The SFC has updated the answer to Question 2 of the FAQ "what are the 'appropriate corporate structure' and 'investment process controls' (i.e., the first criterion of the CPI Assessment) that an intermediary should look for in assessing a CPI under the CPI Assessment?"

The SFC reminded intermediaries to take into account all reasonable and substantive considerations to assess how investment decisions are made by the CPI and exercise its professional judgment when doing so. Examples of the criteria that a CPI would more likely be regarded as having an appropriate corporate structure and substantive investment process include:

- Having an in-house treasury, investment or similar function comprising competent and suitably qualified professionals for its investment strategies, and investment process.
- Having a designated investment committee and an external investment advisory team comprising competent and suitably qualified professionals responsible for its investment strategies and investment process.
- Being ultimately owned by or established for the ultimate benefit of an individual or individuals and relying on competent and suitably qualified professionals to manage the investments of the CPI.

Click [here](#) to view the SFC circular and [here](#) to view the FAQ.

SFC, 8 September 2020

IA consults on the proposed Insurance (Special Purpose Business) Rules (SPB Rules)

The IA launched on 4 September 2020 a six-week public consultation on the draft SPB Rules to tie in with the expected implementation of the new regulatory regime for the issuance of insurance-linked securities (ILS) in Hong Kong in 2021.

ILS are sophisticated financial products which are considered unsuitable for the risk appetite of ordinary retail investors. The proposed SPB Rules rate intended to protect the interests of ordinary retail investors by providing for restrictions on the sale of ILS, including the scope of eligible investors, a minimum investment size and offences against the contravention of sales restrictions.

Click [here](#) to view the IA press release and [here](#) to view the consultation paper.

IA, 4 September 2020

Extension of phase 2 of the temporary facilitative measures (TFM) to tackle the outbreak of COVID-19

The IA extends phase 2 of TFM by three months to 31 December 2020 to obviate the need to conduct face-to-face (F2F) meetings in order to minimize the risk of infection during the sale process of insurance policies.

Products covered by the TFM include Qualifying Deferred Annuity Policy, Voluntary Health Insurance scheme products, term life policies, and refundable policies without substantial savings component or renewable policies without cash value that provide insurance protection. Insurers and intermediaries can distribute those products via different non-F2F means, such as digital, telemarketing, postal, or video conferencing but are required to make upfront disclosure at the point-of-sale, and provide an extended cooling-off period of no less than 30 calendar days for the protection of policy holders.

Click [here](#) to view the IA press release.

HKMA, 5 August 2020

Enhanced disclosure measures in respect of digital platforms for the application of unsecured loan and credit card products

AIs are required to undertake proactive steps to ensure that their relevant digital application processes are designed in a manner which, in promotion of responsible business conduct and responsible borrowing, facilitate the prospective borrowers to understand the key product features as well as the terms and conditions of the credit products, and provide the prospective borrowers with adequate chance to consider the implications of their repayment obligations in order to enable them to make informed borrowing decisions.

Specifically, when designing digital platforms for retail individual and small and medium-

sized enterprises customers to apply for unsecured loan and/or credit card products, AIs should consider the use of proper tools and designs to give customers a "double reminder" to consider their borrowing decisions during the application process. That is, AIs should provide clear and prominent disclosures and obtain customers' confirmations of understanding in respect of:

1. Key product features as well as terms and conditions of that credit product in general.
2. Key details on the specific credit product (i.e., unsecured loan and/or credit card product) that will be applicable to the borrower, or that the borrower applies for, and educational messages on responsible borrowing.

Click [here](#) to view the HKMA circular.

HKMA, 4 September 2020

Extension of Preapproved Principal Payment Holiday scheme

Given the persistence of the COVID-19 pandemic and the severity of the ensuing economic downturn, the HKMA has decided to extend the Preapproved Principal Payment Holiday scheme by six months.

With such an extension, the principal payments of all loans of eligible corporate borrowers (i.e., borrowers with an annual turnover less than HK\$800 million and with no loan payment overdue for more than 30 days as at 1 November 2020) falling due between 1 November 2020 and 30 April 2021 should be deferred by six months except for repayments of trade loans, which should be deferred by 90 days. The deferment applies whether or not a loan has been on a principal payment holiday.

AIs need not issue individual notifications to eligible customers regarding the extension of the scheme and should handle each eligible customer's case on a preapproved basis. AIs

may seek updated financial or business information from customers particularly those who have already been granted multiple extensions of payment holiday. All other terms of the scheme set out in the Annex to the HKMA's circular on 17 April 2020 should continue to apply.

This extension will not by itself result in a loan being downgraded nor rescheduled as long as the terms of the deferment are commercial. HKMA further notes that guidance issued by the Hong Kong Institute of Certified Public Accountants (HKCPA) stipulates that the provision of payment holidays to borrowers should not automatically result in loans being considered to have suffered a significant increase in credit risk for the purposes of determining expected credit loss, which is in line with the guidance published by the Basel Committee on Banking Supervision.

Click [here](#) to view the HKMA circular to AIs and [here](#) to view the Annex to the circular.

Click [here](#) to view the HKCPA circular.

HKMA, 2 September 2020

Circular providing Interpretation Notes relating to the Guideline on Cooling-off Period (GL29)

IA issued the Interpretation Notes relating to GL29, providing further guidance to AIs and licensed insurance intermediaries on delivery and cooling-off period as well as nominated representatives. This includes:

- Explanation of what constitutes sufficient proof of delivery where delivery is made by hand, registered post or couriers, and via electronic means.
- Clarification of the "nine-calendar-day-period" timeframe for AIs to deliver policy documents to the licensed insurance intermediary.

- Clarification that where possible, AIs should specify the exact date of the Cooling-off Period in the Cooling-off Notice, but otherwise, it can be a description that clearly informs the policy holder of when the Cooling-off Period should end.
- Clarification of the circumstances that licensed insurance brokers would be deemed to fall within the definition of "nominated representative of the policy holder" under GL29.

Click [here](#) to view the IA circular and [here](#) to view the Interpretation Notes relating to GL29.

IA, 1 September 2020

Data Protection

Privacy Commissioner on safeguarding personal data when participating in large-scale lucky draw activities

The Office of the Privacy Commissioner of Personal Data (PCPD) notes that certain supermarket chains will conduct a universal lucky draw activity in which members of the public may register online or by phone.

The PCPD noted media reports about fraudulent promotional activities allegedly claimed to be conducted by supermarket chains. The PCPD reminds the public to stay vigilant when providing personal data to participate in promotional activities. Participants should pay attention to information released by the organizers to ascertain the correct websites and methods of registration; the personal data to be provided; the purpose of collection and retention period, etc. Further, participants should be aware of phishing websites.

The PCPD also urges merchants to handle personal data prudently when organizing large-scale lucky draw activities to ensure compliance with the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO). In particular, the PCPD highlights the following points:

- The collection of personal data should be necessary but not excessive. The purpose of the collection should be directly related to the lucky draw activities. The means of collection should be lawful and fair. Merchants should inform participants of the purpose(s) of using their data and the classes of persons to whom their data may be transferred.
- After the original purpose(s) of the collection of personal data has been fulfilled, the data should be erased as soon as practicable.
- The use of personal data is restricted to the purpose stated at the time of collection. Except with the participants'

express and voluntary consent, data should not be used for any other purpose (including promotion of goods or direct marketing activities).

- All practical steps should be taken to protect the personal data against unauthorized or accidental access, processing, erasure, loss, or use.

Click [here](#) to view the media statement.

PCPD, 24 September 2020

Privacy Commissioner reminds schools to protect personal data privacy of teachers, staff and students

As kindergartens, primary and secondary schools will resume classes in phases from 23 September 2020, the PCPD issued the guidance for Schools on the Collection and Use of Personal Data of Teachers, Staff and Students during COVID-19 Pandemic (the guidance) to remind schools to strike a reasonable balance between safeguarding public health and protection personal data privacy, particularly when collection sensitive health data.

"As most students are minors, data privacy perspective, they need more protection," said Ms. Ada Chung, the Privacy Commissioner for Personal Data.

In the guidance, the PCPD acknowledges that schools may implement COVID-19 prevention measures, which may involve the collection of personal data including temperature measurements, travel histories, and other health data of teachers, staff, and students. However, the guidance recommends that schools should only collect necessary and appropriate data which is proportional to the collection purposes. School should consider adopting a self-reporting system and collect personal data through questionnaires which provide multiple-choice answers, as opposed to open-ended questions, to avoid

unnecessary personal data collected inadvertently.

In relation to personal data collected from teachers, staff, and students, schools are also reminded to use such data only for the original purposes that the parties were informed of (i.e., safeguarding health of teachers, staff, and students). In this regard, the guidance notes that the PDPO allows certain situations under which the use and disclosure of personal data may be exempted from seeking the data subject's prescribed consent, including disclosure of identity, health, and location data of students to public health authorities for tracing and treating persons infected with COVID-19, and safeguarding public health.

When the purpose of collection is fulfilled, such as after a reasonable period since the date of collection and no evidence showing that the teacher, staff or student have been infected with COVID-19, the school should permanently destroy the personal data collected.

The guidance also sets out the data security and rights of teachers, staff and students to request access to and correction of their personal data.

Click [here](#) to view the media statements and click [here](#) to read the guidance.

PCPD, 23 September 2020

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