

REGULATORY UPDATES (FINANCIAL SERVICES) November 2018 Issue



To maintain the financial stability and facilitate the economic growth of Hong Kong, regulators have been reviewing and establishing different legal framework regularly for financial institutions. In this month, the Hong Kong Monetary Authority (HKMA) and Securities and Futures Commission (SFC) have the following updates:

Contraventions of the Banking Ordinance

The HKMA observed regular contraventions by Authorized Institutions (AIs) of certain provisions of the Banking Ordinance on 8 October 2018.

The most frequent recurrent contravention were sections 20(4)(b), 65, 72A(2A) and 72B. The HKMA has also reminded the AIs should have in place internal controls to ensure the compliance pursuant to the HKMA Supervisory Policy Manual module IC-1 'Risk Management Framework'.

[Read more on HKMA's website](#)

Investment horizon and suitability assessment

The HKMA has provided clarifications and guidance to facilitate AIs' implementation of the relevant regulatory requirements on investment horizon and suitability assessment on 18 October 2018.

When an AI considers a customer's investment horizon and liquidity needs as part of its suitability assessment, it should take into account not only the product tenor, but also other relevant factors such as product liquidity, termination conditions and transaction costs.

An AI should consider whether such products could be included in a customer's investment portfolio (eg illiquid financial products), and if so the extent that such products could be included, after taking into account the customer's investment horizon and financial situation such as liquidity needs.

[Read more on HKMA's website](#)

CONTENTS

- ▶ **Contraventions of the Banking Ordinance**
- ▶ **Investment horizon and suitability assessment**
- ▶ **Amendments to Guideline on AML/CFT (For AIs and SVF Licensees)**
- ▶ **Supervisory Policy Manual (SPM): AML-1 (For AIs) and Policy and Supervisory Approach on AML/CFT (For SVF Licensees)**
- ▶ **Code of Banking Practice**
- ▶ **The HKMA strengthening the verification requirements for electronic wallets setting up direct debit authorisations**
- ▶ **Requirements Applicable to Online and Offline Distribution of Non-SFO-Regulated Structured Investment Products**
- ▶ **Launch of eTradeConnect and the Collaboration with we.trade**
- ▶ **Use of 'nominees' and 'warehousing' arrangements in market and corporate misconduct**

Amendments to Guideline on AML/CFT (For AIs and SVF Licensees)

The HKMA published in the Gazette (G.N. 7769 and 7770 of 2018) on 19 October 2018 the revised Guideline on Anti-Money Laundering and Counter-Financing of Terrorism for Authorized Institutions and SVF Licensees (AML/CFT Guideline) effective on 1 November 2018.

AIs and SVF licensees were reminded to review the revised AML/CFT Guideline and implement appropriate measures, consistent with the risk-based approach, to ensure compliance.

[Read more on HKMA's website](#) (For AIs)

[Read more on HKMA's website](#) (For SVFs)

Supervisory Policy Manual (SPM): AML-1 (For AIs) and Policy and Supervisory Approach on AML/CFT (For SVF Licensees)

The HKMA published on 19 October 2018 the new SPM modules on AML/CFT. These follow the publication of 'Hong Kong Money Laundering and Terrorist Financing Risk Assessment Report' by the Government in April 2018, which includes policy statements of Hong Kong's AML/CFT regime.

With the aim of greater policy transparency, the circulars set out the HKMA's overall and supervisory approach for AML/CFT policies, procedures and controls of AIs, and it is not intended to introduce any new requirements for AIs and SVF Licensees.

[Read more on HKMA's website](#) (For AIs)

[Read more on HKMA's website](#) (For SVFs)

Code of Banking Practice

On 19 October 2018, the HKMA issued a circular to remind AIs' compliance with all the provisions of the Code of Banking Practice (the Code) which set out the minimum standards that AIs should follow in their dealings with customers in order to ensure customers are being treated fairly.

The 17 Provisions were re-activated as part of the Code as of 19 October 2018 by the HKAB. The Competition Commission also agreed with the details set out in the circular.

[Read more on HKMA's website](#)

The HKMA strengthening the verification requirements for electronic wallets setting up direct debit authorisations

The HKMA has reviewed the process of electronic wallets users setting up direct debit authorisation (eDDA) through the Faster Payment System (FPS) on 26 October 2018.

Stored value facility operators and banks were requested to adopt the following refined process to enhance user protection:

- a) the user would receive an SMS notification from his bank to confirm the setting-up of eDDA; or
- b) the user would need to make a one-time credit transfer from the relevant bank account to his electronic wallet, so as to confirm the wallet user was the same as the bank account owner; or
- c) Bank's Two-factor Authentication.

The above refined process will apply to direct debit services conducted through both FPS and non-FPS channels. Direct debit services through both channels were temporarily suspended but will resume gradually.

[Read more on HKMA's website](#)

Requirements Applicable to Online and Offline Distribution of Non-SFO-Regulated Structured Investment Products

On 30 October 2018, the HKMA has published the guidance on requirements applicable to offline distribution of structured investment products not regulated by the Securities and Futures Ordinance.

To avoid potential regulatory arbitrage, in respect of distributing or providing advice on non-SFO-regulated structured investment products in an offline environment, AIs are expected to follow and implement the same requirements as those applicable to the online platforms by 23 August 2019.

[Read more on HKMA's website](#)

Launch of eTradeConnect and the Collaboration with we.trade

The HKMA announced the official launch of eTradeConnect, a blockchain-based trade finance platform developed by a consortium of 12 major banks in Hong Kong on 31 October 2018. Formerly known as the Hong Kong Trade Finance Platform, eTradeConnect aims to improve trade efficiency, build better trust among trade participants, reduce risks and facilitate trade counterparties to obtain financing by digitising trade documents, automating trade finance processes and leveraging the features of blockchain technology.

The next HKMA's key milestone is to link eTradeConnect with platforms from other regions in order to enable cross-border trade financing. The connection between eTradeConnect and we.trade platform paves the way for the digitalisation of cross-border trades in the Asia and Europe trade corridor, and will serve as a good reference for the future connection of eTradeConnect to other trade finance platforms.

[Read more on HKMA's website](#)

Use of 'nominees' and 'warehousing' arrangements in market and corporate misconduct

The SFC has published a circular on the prevalent use of 'nominees' and 'warehousing' arrangements facilitating market and corporate misconduct on 9 October 2018.

Such illegal arrangements were noted by the SFC as cases were found to have manipulated share prices or voting results in general meetings of listed companies which undermined the market integrity. In turn, the SFC has provided examples of red flags indicating potential improper activities and reminded the intermediaries to take reasonable steps such as making follow-up enquiries with clients and addressing apparent red flags with prompt reporting to avoid the breach of regulatory requirements.

[Read more on SFC's website](#)

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