

Regulatory Changes in Hong Kong Regarding Bookbuilding and Placing Activities

Client Alert

1 Background and Regulatory Intent

On April 22, 2022, the Hong Kong Stock Exchange (the “Exchange”) published an [information paper](#) (the “Information Paper”) outlining the consequential amendments (the “Rule Amendments”) to the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the “Listing Rules”) following the new requirements issued by Securities and Futures Commission (the “SFC”) under the Code of Conduct (the “Code of Conduct”) for Persons Licensed by or Registered with the Securities and Futures Commission on bookbuilding and placing activities¹ and sponsor coupling² (the “New Code Provisions”). The Rule Amendments, as well as the New Code Provisions, are due to take effect on August 5, 2022, with transitional arrangement in place as further elaborated in section 2.5 below. The Information Paper was accompanied by a frequently asked questions (FAQ No. 077-2022, “[FAQ](#)”), providing practical guidance on these Rule Amendments.

The New Code Provisions and the Rule Amendments are mainly driven by the securities regulators’ efforts to clarify the roles played by intermediaries in equity and debt capital market transactions by codifying good industry practices in bookbuilding, pricing, allocation and placing activities. Areas of focus include conflicts of interest, inflated demand in the bookbuilding process, ambiguous roles and responsibilities of different intermediaries and fluid incentive structures.

The New Code Provisions are predominantly embodied in paragraph 21 of the Code of Conduct, which details the SFC’s expectation on the behavior of capital market intermediaries (“CMI”) in bookbuilding and placing activities in both equity and debt capital market transactions (generally, “bookbuilding”). The Rule Amendments dovetail the New Code Provisions by providing documentary and disclosure requirements designed to enhance the transparency of bookbuilding process.

In this article, in respect of the Rule Amendments, we have focused our analyses on the Main Board Listing Rules (“LR”). However, corresponding changes have also been made to the GEM Listing Rules (with the exception of the “sponsor coupling” requirement).

[Click here](#) if you wish to access our Practice Group/Industry website.

1 The SFC clarified that the New Code Provisions do not cover offerings which do not involve bookbuilding activities such as club deals, private placements and allocations on a pre-determined basis at a pre-determined price.

2 On February 8, 2021, the SFC published the “[Consultation Paper on \(i\) the Proposed Code of Conduct on Bookbuilding and Placing Activities in Equity Capital Market and Debt Capital Market Transactions and \(ii\) the ‘Sponsor Coupling’ Proposal](#)”. On October 29, 2021, the SFC announced its consultation conclusions and amendments to the Code of Conduct (“[Consultation Conclusions](#)”).

IN THIS ISSUE

1 Background and Regulatory Intent1

2 Key Takeaways from Rule Amendments3

2.1 What Has Been Changed in A Typical IPO Timeline After The Rule Amendments 5

2.2 Types of Intermediaries Involved In IPOs7

2.3 Roles of Intermediaries and Listing Applicant and Relevant Requirements 8

2.4 Requirements Relating to Publication of OC Announcements 14

2.5 Transitional Arrangement in Relation to The Requirement on Sponsor-Overall Coordinators....15

2.6 Implications of Termination of Sponsor-Overall Coordinator Engagement 18

3 New Code Provisions 18

3.1 Types of Offerings Covered 18

3.2 “Specified Activities” 19

3.3 “Sponsor-Coupling” Requirement 19

3.4 Key Obligations and Standards Required of CMLs 19

3.5 Key Obligations and Standards Required of Overall Coordinators20

2 Key Takeaways from Rule Amendments

The following sets out a high-level summary of the key changes introduced in the Rule Amendments in connection with initial public offerings (“IPOs”) on the Main Board (“Main Board IPOs”) that involve bookbuilding activities:

- **Appointment of overall coordinator.** Before conducting any specified activities in a placing, overall coordinator(s) (as the “head of syndicate” coordinating and exercising control over the bookbuilding process) and CMI³ should be appointed by written agreement (which includes, among others, fee arrangement and payment schedule). Appointment of at least one sponsor-overall coordinator (referring to an overall coordinator which itself, or one of the companies within its group of companies, is a sponsor) should be made no less than two months before the submission of listing application to the Exchange (the “A1 Submission”), with a designated sponsor-overall coordinator should there be more than one sponsor-overall coordinator⁴. In order to become a sponsor-overall coordinator, the appointment of the sponsor and the appointment of the overall coordinator (being an entity within the same group of companies with the sponsor) should be made at the same time. Appointment of all overall coordinator(s) (other than those appointed as sponsor-overall coordinator(s)) should be made no later than two weeks following A1 Submission. An announcement setting out the name(s) of the sponsor-overall coordinator(s) and overall coordinator(s) (if any) already appointed (“OC Announcement”) should be made by the listing applicant on the same date of A1 Submission (which is a non-confidential filing⁵). After A1 Submission, if there is an appointment of any additional overall coordinator (which must be made no later than two weeks after A1 Submission), an additional OC Announcement should be made.
- **Termination of overall coordinator.** After A1 Submission, if an appointment of an overall coordinator is terminated, (1) the listing applicant and the outgoing overall coordinator should notify the Exchange in writing of such termination of the outgoing overall coordinator together with (i) the reasons therefor and (ii) a “no disagreement” confirmation and (2) an additional OC Announcement should be made for such termination. If the engagement of the sponsor-overall coordinator is terminated after A1 Submission and no sponsor-overall coordinator remains, the listing applicant may only file a new listing application not less than two months from the date of the formal appointment of a replacement sponsor-overall coordinator.
- **Associated obligations of listing applicants and their directors.** LRs impose obligations on listing applicants and their directors to provide all syndicate CMI³s with a list of persons associated with the listing applicant be put in writing in the engagement letter with each syndicate member. The listing applicant should confirm that no rebate has been provided by it, its controlling shareholder(s) and directors and the syndicate members to any placees or the public (as the case may be), in the results announcement.
- **Other reporting, publication and disclosure requirements relating to fee arrangements.** The sponsor-overall coordinator (or the designated sponsor-overall coordinator should there be more than one sponsor-overall coordinator) should submit to the Exchange no later than four clear business days prior to the

³ As “marketing” is included as one of the specified activities as stated in section 3.2 of this article, CMI³s which approach potential buyers prior to soliciting an appointment from the listing applicant would be in breach of the Code of Conduct.

⁴ There are no explicit rules or FAQs requiring such designated sponsor-overall coordinator to be the sponsor designated as the primary channel of communication with the Exchange concerning matters involving the listing application pursuant to Rule 3A.10(1) of the Listing Rules.

⁵ A new applicant allowed to make a confidential filing of its application proof under the LR is not required to publish an OC Announcement at its A1 Submission and is instead required to publish an OC Announcement on the same date as it publishes its PHIP.

Listing Committee hearing, among others, the fixed fees to be paid by the listing applicant to each overall coordinator (not including other CMIs), the total fees (including discretionary fees) as a percentage of the gross IPO proceeds and the ratio of fixed and discretionary fees⁶ (each as a percentage of the total fees paid or payable to all syndicate CMIs) in respect of both the public subscription and the placing tranches. The names of all syndicate CMIs and any other distributor engaged by the listing applicant to conduct bookbuilding, placing and/or related activities in respect of an IPO (collectively, the “syndicate members”) should be disclosed in the prospectus and the formal notice to be published on the prospectus date (implying no new syndicate members should be added afterwards which will have an implication on the IPO timetable).

- **Effective date of Rule Amendments:** August 5, 2022.

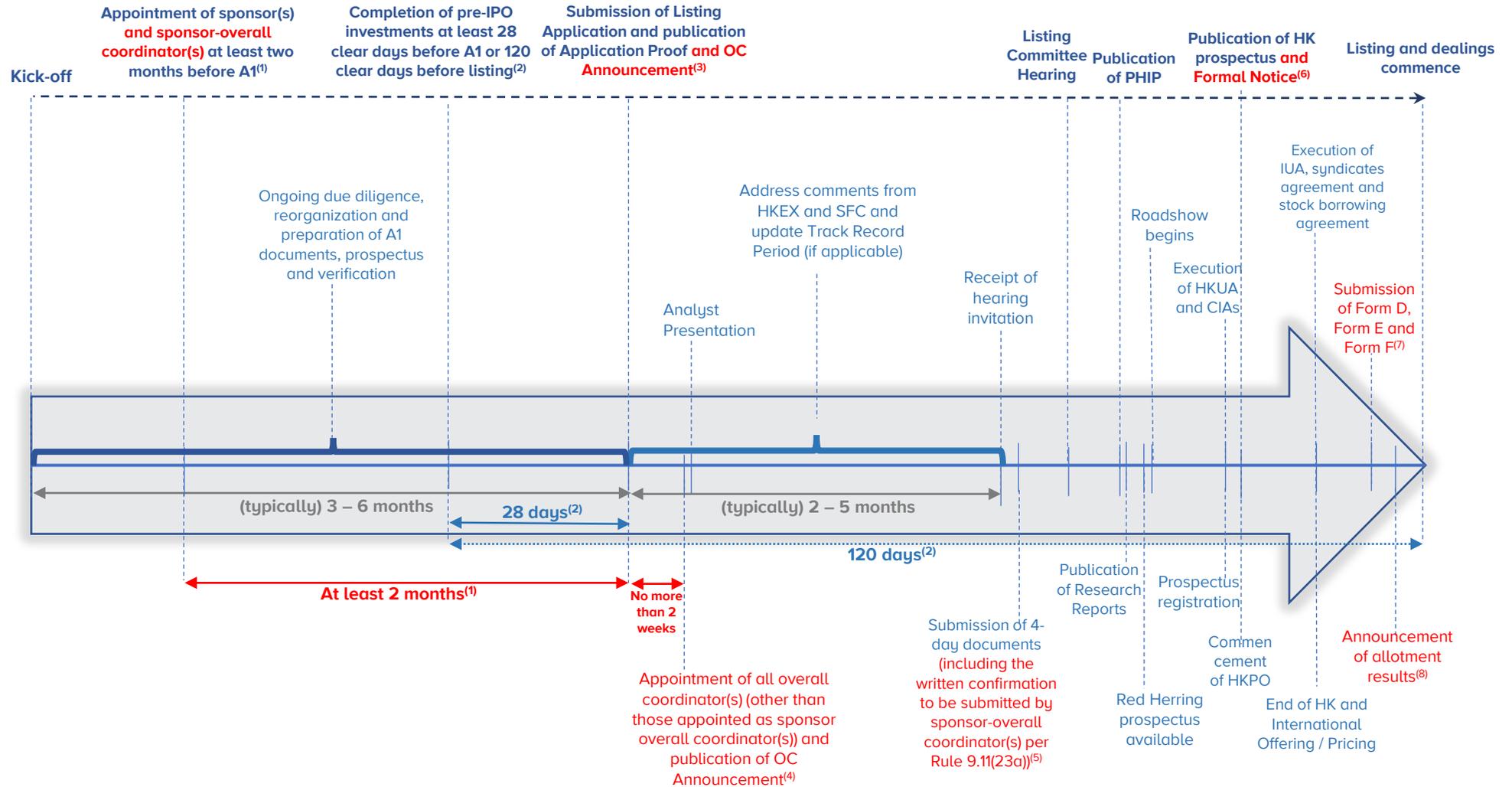
With a view to providing a more practical guide to comply with the Rule Amendments, we have summarized below new features and procedural requirements necessitated by the Rule Amendments, ranging from the changes in an overall timeline for a typical IPO, types of intermediaries involved in IPOs, roles of intermediaries and listing applicant along the IPO and placing (other than in connection with a New Listing⁷) process, publication of OC Announcements, to transitional arrangement with respect to existing sponsor’s engagement letters as well as implication of termination of a sponsor-overall coordinator engagement.

⁶ Pursuant to paragraph 115 of the Consultation Conclusions, post-IPO price performance should not be a consideration for the allocation of discretionary fees. Therefore, all fees to CMIs should be determined solely based on pre-listing date efforts.

⁷ “New Listing” means a new listing of equity securities or interests (including equity securities, interests in a REIT, stapled securities and securities of an investment company (as defined in Rule 21.01 of the Listing Rules)) issued by a listing applicant, irrespective of whether there is an offering of equity securities or interests. It also includes a reverse takeover and a transfer of listing from GEM to Main Board. However, it does not include any other new listing of equity securities or interests issued by an issuer whose equity securities or interests are already listed on the Exchange.

2.1 What Has Been Changed in A Typical IPO Timeline After The Rule Amendments

To provide a quick recap of the key Rule Amendments from a procedural point of view, we have marked below changes in red.



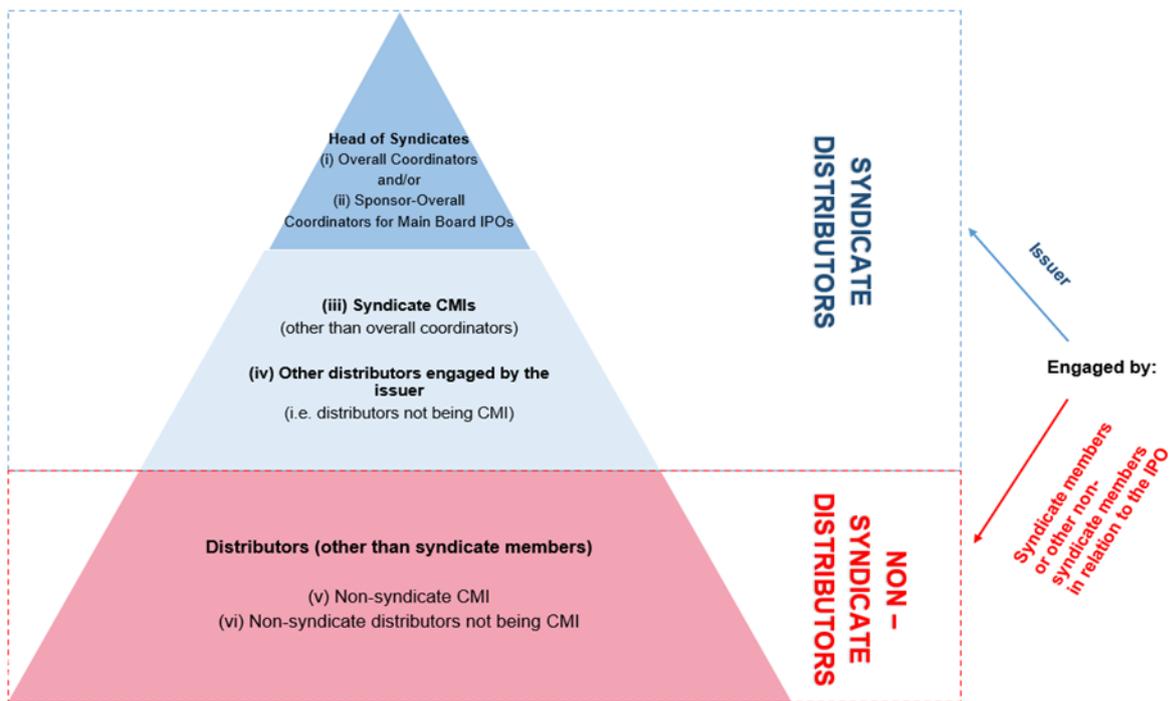
Notes:

- (1) A new applicant must ensure that at least one overall coordinator it appoints is also appointed as a sponsor independent of the new applicant, in accordance with LR3A.02 and 3A.07.
- (2) All pre-IPO investments must be completed (1) 28 clear days before the submission of listing application, or (2) 120 clear days before dealings commence.
- (3) Publication requirements do not apply to new applicants that are allowed to make confidential filings under the Listing Rules.
- (4) All overall coordinators must be appointed no later than 2 weeks following the date of the submission (or re-filing) of the listing application. (In the case of non-confidential filing⁵) For appointment of additional overall coordinators after A1 Submission, publication of OC Announcement as soon as the appointment is made.
- (5) Per the new LR9.11(23a), at least four clear business days before the listing hearing, the sponsor-overall coordinator (or designated sponsor-overall coordinator should there be more than one sponsor-overall coordinator) should submit a written confirmation providing, inter alia, the total fees (as a percentage of the IPO gross proceeds) and ratio of fixed and discretionary fees (in percentage term), in respect of both the public tranche and placing tranche.
- (6) Pursuant to the Rule Amendments, listing applicant should disclose in the formal notice of the names of all syndicate CMI's and any other syndicate members as per LR12.04(5) and Appendix 11.
- (7) Each of Form D, Form E and Form F has been updated under the Rule Amendments.
- (8) Pursuant to the Rule Amendments, listing applicant should include in the results announcement a confirmation from the directors that, to the best of their knowledge, no rebate has been, directly or indirectly, provided by it, its controlling shareholder(s), directors or syndicate members to any placees or the public.

2.2 Types of Intermediaries Involved In IPOs

Complementing the New Code Provisions, the Rule Amendments define the types of intermediaries involved in IPOs and specify their obligations.

The diagram below shows the intermediaries involved in a typical IPO:



Source: FAQ

Notes:

- (1) *Syndicate members, which comprise syndicate CMI and other distributors (i.e. distributors not licensed or registered under the Securities and Futures Ordinance (Cap. 571, “SFO”) engaged by the listing applicant to conduct specified activities.*
- (2) *Non-syndicate distributors that are engaged by entities other than the listing applicant (e.g. syndicate members or other non-syndicate members) to conduct specified activities.*

Assessing the role you are actually playing. Whilst we understand that it is not uncommon for sponsors to cement the underwriting role (including one for global coordinator) in the sponsor’s engagement letter, given the role of an overall coordinator has specific meaning under the New Code Provisions and Rule Amendments, we would recommend entering into an overall coordinator’s engagement letter notwithstanding the existing sponsor’s engagement letter that may have covered other underwriting role. As mentioned in the FAQ, intermediaries may still be awarded titles which are currently used in the market and identified by these titles in the listing documents. The definitions of “capital market intermediary”, “overall coordinator” and “sponsor-overall coordinator” are for the purpose of identifying them specifically based on the specified activities they engage in as stipulated in the New Code Provisions, intermediaries should approach with caution being awarded titles that appear to be inconsistent with how their roles are defined under the New Code Provisions.

2.3 Roles of Intermediaries and Listing Applicant and Relevant Requirements

We have summarized below the applicability of various Rule Amendments against the listing applicant and different intermediaries involved in a bookbuilding process (under a New Listing and a Placing that is not a New Listing) with a view to facilitating their understanding of the new requirements.

a. New Listing

| Role of intermediaries Requirements along the IPO process | Listing Applicant | Overall coordinator | Sponsor-overall coordinator | Syndicate CMI (not being an overall coordinator) | Syndicate distributor (not being a CMI) | Non-syndicate distributor |
|--|-------------------|---------------------|-----------------------------|--|---|--------------------------------------|
| <i>Pursuant to Listing Rules</i> | | | | | | |
| <i>Written agreement for appointing sponsor and sponsor-overall coordinator two months before A1 Submission (LR3A.02 & LR3A.43)</i> | ✓ | | ✓ | | | |
| <i>Written engagement agreement (LR3A.33, LR3A.34⁸, LR3A.35, LR3A.36⁹, FAQ¹⁰ and paragraph 21.3.2 of the New Code Provisions¹¹)</i> | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ <i>(For non-syndicate CMIs)</i> |
| <i>Written agreement between listing applicant and each syndicate member setting out obligations of listing applicant and directors to provide all syndicate CMIs with a list of</i> | ✓ | ✓ | ✓ | ✓ | ✓ | |

⁸ Requirement of written engagement with CMI to include: (i) the roles and responsibilities of the CMI; (ii) the fee arrangement (including the fixed fees to be paid to the CMI as a percentage of the total fees to be paid to all syndicate CMIs); (iii) the payment schedule; and (iv) obligations of the listing applicant and its directors to provide the assistance specified in LR3A.46.

⁹ Requirement of written engagement with overall coordinators to include: (i) the roles and responsibilities of the overall coordinator; (ii) the fee arrangement (including the fixed fees to be paid to the overall coordinator as a percentage of the total fees to be paid to all syndicate CMIs); (iii) the payment schedule; (iv) *(for a sponsor-overall coordinator only)* obligations of the new applicant and its directors to provide the information in LR9.11(23a) to the sponsor-overall coordinator for its submission to the Exchange within the required time; and (v) obligations of the listing applicant and its directors to provide the assistance specified in LR3A.46.

¹⁰ Requirement of written agreement with syndicate distributor (not being CMI) to include: (i) its obligation to assist the overall coordinator(s) to discharge their obligations under the Listing Rules and to require any sub-distributor engaged to provide the same assistance; and (ii) obligations of the listing applicant and its directors to provide the assistance specified in LR3A.46.

¹¹ Requirement of written agreement of CMI with a non-syndicate CMI to include: (i) the roles and responsibilities of the CMI (ii) the fee arrangement (including the fixed fees to be paid to the CMI as a percentage of the total fees to be paid to all syndicate CMIs); and (iii) the payment schedule.

| Role of intermediaries Requirements along the IPO process | Listing Applicant | Overall coordinator | Sponsor-overall coordinator | Syndicate CMI (not being an overall coordinator) | Syndicate distributor (not being a CMI) | Non-syndicate distributor |
|--|-------------------|---------------------|-----------------------------|--|---|---------------------------|
| persons associated with the issuer ¹² (LR3A.46) | | | | | | |
| <i>(In the case of more than one sponsor-overall coordinator) Designation of sponsor-overall coordinator to provide the required information to the Exchange, but all overall coordinators remain jointly and severally liable for ensuring the accuracy and completeness and the information provided within the required timeframe (LR3A.38 and LR3A.44)</i> | | ✓ | ✓ | | | |
| <i>Publication of OC Announcement upon A1 Submission as further detailed in section 2.4 of this article (Practice Note 22) (For non-confidential filing⁵)</i> | ✓ | ✓ | ✓ | | | |
| <i>Appointment of all overall coordinators no later than two weeks after A1 Submission (LR3A.37) (Not applicable to sponsor-overall coordinator)</i> | ✓ | ✓ | | | | |

¹² Pursuant to LR3A.46, requirement of written agreement with each syndicate member to include the following obligations of the listing applicant and its directors: (i) as soon as practicable and in any event at least four clear business days before the Listing Committee hearing, to provide the syndicate member with a list of the directors and existing shareholders of the issuer, their respective close associates and any persons who is engaged by or will act as a nominee for any of the foregoing persons to subscribe for, or purchase, equity securities or interests in connection with the IPO; (ii) to keep the syndicate member informed of any material change to the information under (i) as soon as it becomes known to the issuer and its directors; and (iii) to provide to, or procure for, the syndicate member all necessary consents for its provision of the information referred to in (i) to (ii) above to any distributor other than a syndicate member for the same purpose.

| Role of intermediaries Requirements along the IPO process | Listing Applicant | Overall coordinator | Sponsor-overall coordinator | Syndicate CMI (not being an overall coordinator) | Syndicate distributor (not being a CMI) | Non-syndicate distributor |
|--|-------------------|---------------------|-----------------------------|--|---|---------------------------|
| <i>Written confirmation¹³ from the (designated) sponsor-overall coordinator within 4 clear business days prior to Listing Committee hearing (LR9.11(23a))</i> | | | √ | | | |
| <i>Disclosure of syndicates' names in the formal notice (LR12.04(5) & Appendix 11)</i> | √ | √ | √ | √ | √ | |
| <i>Disclosure of aggregate fees and ratio of fee split in the prospectus (Paragraph 3B of Appendix 1A)</i> | √ | √ | √ | √ | √ | |
| <i>Submission of a copy of the placing letter, a marketing statement in the form of Form D and placee list before dealings commence (LR9.11(35) and Appendix 5D)</i> | | √ | √ | √ | √ | √ |
| <i>Submission of Form E before dealings commence, in respect of, among others, the compliance of the placing with Appendix 6 (LR3A.40 & LR9.11(36))</i> | | √ | √ | | | |
| <i>Submission of Form F by the listing applicant before dealings commence, including confirmation of determination of the allocation of discretionary fees to be paid, and the time schedule for the payment of the total fees payable, to each syndicate CMI (LR9.11(37))</i> | √ | | | | | |
| <i>Inclusion in the results announcement a confirmation from the listing applicant's directors that, to the best of their knowledge,</i> | √ | | | | | |

¹³ Such written confirmation should include: (i) the name of each overall coordinator; (ii) the fixed fees to be paid by the issuer to each overall coordinator; (iii) the total fees (as a percentage of the gross proceeds to be raised from the New Listing) in respect of both the public subscription and the placing tranches to be paid to all syndicate CMIs; and (iv) the ratio of fixed and discretionary fees to be paid to all syndicate CMIs for both the public subscription and the placing tranches (in percentage terms).

| Role of intermediaries Requirements along the IPO process | Listing Applicant | Overall coordinator | Sponsor-overall coordinator | Syndicate CMI (not being an overall coordinator) | Syndicate distributor (not being a CMI) | Non-syndicate distributor |
|---|-------------------|---------------------|-----------------------------|--|---|---------------------------|
| <i>no rebate has been provided to any places or the public (Note 2 to LR12.08)</i> | | | | | | |
| <i>Requirements relating to, and restrictions on, placing activities (Paragraphs 5, 8, 9, 10, 11 and 12 of Appendix 6)</i> | | ✓ | ✓ | ✓ | ✓ | ✓ |
| <i>Obligation to make adequate distribution facilities available, run application list and determine a fair basis for allocation when the issue is oversubscribed; obligation to inform the Exchange where decisions made by a listing applicant amount to non-compliance with the Listing Rules related to, among other things, the placing activities conducted (Paragraphs 3 and 19 of Appendix 6)</i> | | ✓ | ✓ | | | |
| <i>Pursuant to Code of Conduct</i> | | | | | | |
| <i>Key Obligations and Standards Required of CMIs as further detailed in section 3.4 of this article</i> | | ✓ | ✓ | ✓ | | |
| <i>Key Obligations and Standards Required of Overall Coordinator as further detailed in section 3.5 of this article</i> | | ✓ | ✓ | | | |

b. Placing that is not a New Listing

| Requirements along a placing | Role of intermediaries | Issuer | Overall coordinator | Syndicate CMI (not being an overall coordinator) | Syndicate distributor (not being a CMI) | Non-syndicate distributor |
|--|------------------------|--------|--|--|--|-------------------------------|
| <i>Pursuant to Listing Rules</i> | | | | | | |
| <i>Written engagement agreement (LR3A.33, LR3A.34⁸, LR3A.35, LR3A.36⁹, FAQ¹⁰ and paragraph 21.3.2 of the New Code Provisions¹¹)</i> | | ✓ | ✓ | ✓ | ✓ | ✓ (For non-syndicate CMIs) |
| <i>(In the case of more than one overall coordinator) Designation of overall coordinator to provide the required information to the Exchange, but all overall coordinators remain jointly and severally liable for ensuring the accuracy and completeness and the information provided within the required timeframe (LR3A.38 and LR3A.39)</i> | | | ✓ | | | |
| <i>Disclosure in an announcement of the proposed placing by the issuer of syndicates' name and the principal terms of the underwriting/placing arrangements (LR13.28(10))</i> | | ✓ | ✓ (Information of which is disclosed) | ✓ (Information of which is disclosed) | ✓ (Information of which is disclosed) | |
| <i>Disclosure of syndicates' names in the formal notice (LR12.04(5) & Appendix 11)</i> | | ✓ | ✓ | ✓ | ✓ | |
| <i>Submission of a copy of the placing letter, a marketing statement in the form of Form D and placee list before dealings commence (LR9.23(2) and Appendix 5D)</i> | | | ✓ | ✓ | ✓ | ✓ |
| <i>Requirements relating to, and restrictions on, placing activities (Paragraphs 5, 8, 9, 10, 11 and 12 of Appendix 6)</i> | | | ✓ | ✓ | ✓ | ✓ |
| <i>Obligation to make adequate distribution facilities available, run application list and determine a fair basis for allocation when the issue is oversubscribed; obligation to inform the Exchange where decisions made by an issuer</i> | | | ✓ | | | |

| Requirements along a placing Role of intermediaries | Issuer | Overall coordinator | Syndicate CMI (not being an overall coordinator) | Syndicate distributor (not being a CMI) | Non-syndicate distributor |
|---|--------|---------------------|--|---|---------------------------|
| <i>amount to non-compliance with the Listing Rules related to, among other things, the placing activities conducted (Paragraphs 3 and 19 of Appendix 6)</i> | | | | | |
| <i>Pursuant to Code of Conduct</i> | | | | | |
| <i>Key Obligations and Standards Required of CMIs as further detailed in section 3.4 of this article</i> | | √ | √ | | |
| <i>Key Obligations and Standards Required of Overall Coordinator as further detailed in section 3.5 of this article</i> | | √ | | | |

2.4 Requirements Relating to Publication of OC Announcements

| Requirements for publication of OC Announcements | |
|--|---|
| Applicability | <p>The requirement for publication of an OC Announcement applies to a new applicant effecting a placing involving bookbuilding activities in connection with a New Listing and does not apply to an offering by a listed issuer.</p> <p>For listing applications submitted <i>before</i> August 5, 2022:</p> <ul style="list-style-type: none"> • The requirement for publication of an OC Announcement <i>does not apply</i>, even if the appointment of an overall coordinator falls on or after August 5, 2022. • However, the requirement <i>applies</i> in the case of re-filing of listing application made on or after August 5, 2022. <p>For listing applications submitted <i>on or after</i> August 5, 2022:</p> <ul style="list-style-type: none"> • The requirement for publication of an OC Announcement <i>applies</i> and the obligation only arises when a new applicant submits a listing application. • The requirement <i>does not apply</i> to an appointment or termination of an overall coordinator that takes place <i>before</i> the submission of its listing application |
| Timing for publishing the OC Announcements | <p>Initial Publication – sets out the name(s) of all overall coordinator(s) appointed by the new applicant as at the date of the announcement:</p> <ol style="list-style-type: none"> For new applicants that are not allowed to make a confidential filing⁵ under the Listing Rules: on the <i>same date</i> as the new applicant files the listing application (or a re-filing of the listing application) and publishes the Application Proof (“<i>Submission of Application</i>”). For new applicants that are allowed to make a confidential filing⁵ under the Listing Rules is required to publish an OC Announcement on the <i>same date</i> as it publishes its PHIP instead. <p>Subsequent Publication(s) – disclose appointment of additional overall coordinator(s) or termination of the appointment of overall coordinator(s), and set out the name(s) of all overall coordinator(s) who remain appointed as at the date of the announcement:</p> <ol style="list-style-type: none"> each time an additional overall coordinator is appointed after the Submission of Application. In such a case, the OC Announcement shall be published as soon as practicable after the appointment is made and in any event <i>no later than the first business day after the date of the appointment</i> (which appointment shall be no later than the 14th day after the date of Submission of Application); and each time the appointment of an overall coordinator is terminated after the Submission of Application (or after the publication of the first OC Announcement for applicants allowed to make a confidential filing⁵). In such circumstances, the OC Announcement shall be published as soon as practicable after the termination takes place, and is expected to be published <i>no later than the first business day after the date of the termination</i> of the appointment. |
| Other content requirements of OC Announcement | <p>Similar to Application Proof and PHIP, the OC Announcement must be accompanied by appropriate disclaimer and warning statements and not contain any information regarding the proposed offering or other information that would result in it being deemed as (i) a prospectus under section 2(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32, “CWUMPO”); (ii) an advertisement under section 38B(1) of the CWUMPO; or (iii) an invitation to the public in breach of section 103(1) of the SFO, as stipulated under paragraphs 4(d) and 5A of Practice Note 22.</p> |
| Method of publication | <p>A new applicant shall submit the OC Announcement through HKEx-ESS for publication on the Exchange’s website, and is <i>not</i> required to publish the OC Announcement on its own website.</p> <p>OC Announcements do <i>not</i> require pre-vetting or clearance from the Exchange or the SFC prior to publication.</p> |

2.5 Transitional Arrangement in Relation to The Requirement on Sponsor-Overall Coordinators

Notwithstanding that the Rule Amendments will not apply to the listing applications filed before August 5, 2022, in the event that these listing applications subsequently lapse, are withdrawn or are otherwise terminated, any re-filing of such listing applications on or after August 5, 2022 will need to comply with the Rule Amendments, subject to the transitional arrangement set out below. As such, if bookbuilding activities are expected to take place in connection with a New Listing (e.g. not listing by introduction or not an offer by public subscription only), it is suggested that due considerations should be given to assess whether the *existing signed sponsor's engagement letter* is sufficient to comply with the Rule Amendments:

| | Date of Sponsor's Engagement Letter, A1 Submission and Re-filing | Transitional Arrangement | Suggested Action Plan with respect to the Sponsor's Engagement Letter |
|----|--|--|--|
| 1. | <p><i>Refiling (on or after August 5, 2022) of Listing Application (that was submitted before August 5, 2022)</i></p> <p><i>Date of Sponsor's Engagement Letter: before April 22, 2022</i></p> <p><i>Date of Re-filing: on or after August 5, 2022</i></p> | <p>The Exchange would accept the sponsor-overall coordinator being duly appointed for the purpose of LR3A.43 (even though its appointment as an overall coordinator was not made at the same time as it or its group company was appointed as a sponsor) if:</p> <p>(i) the new applicant has already appointed an independent sponsor before April 22, 2022, and the notification of the sponsor engagement has been submitted to the Exchange before April 22, 2022 (no re-submission of the sponsor's engagement letter is needed);</p> <p>(ii) the independent sponsor referred to in condition (i) above or its group company has also been appointed as an overall coordinator (Note 3) for the purpose of LR3A.43 before August 5, 2022 and at least two months before the submission of the initial application or re-filing;</p> <p>(iii) the engagements of such sponsor and overall coordinator remain valid and effective as at the time of the submission of the initial application or re-filing; and</p> <p>(iv) the re-filing is submitted within three months from the lapse of the last listing application.</p> | <p><i>To meet condition (ii) under the "Transitional Arrangement":</i></p> <p>As soon as practicable, enter into an agreement with the new applicant on the role of overall coordinator before (i) August 5, 2022 and (ii) at least two months prior to the A1 Submission or re-filing, whichever is earlier, and notify the Exchange¹⁴. The agreement on overall coordinator role should be entered into <i>no later than August 4, 2022 in any event</i>. As such, if the A1 Submission or the re-filing of which is intended to take place as early as August 5, 2022, the agreement should be entered into no later than June 5, 2022.</p> <p><i>If any of the conditions under "Transitional Arrangement" is not expected to be met:</i></p> <p>For a sponsor-overall coordinator—Terminate the existing sponsor engagement, enter into new engagement letter(s)¹⁵ to act as a sponsor and an overall coordinator (or have an intermediary within its group of companies enter into a new engagement letter to act as an overall coordinator) at the same time and notify the Exchange¹⁴. The earliest re-filing date will be two months after the execution of such engagement letter(s).</p> |

¹⁴ Whilst the FAQs do not specifically require notification after such appointment, it is recommended to notify the Exchange via email at ipoteamadmin@hkex.com.hk and communicate with the Exchange as to whether the form of notification is in order.

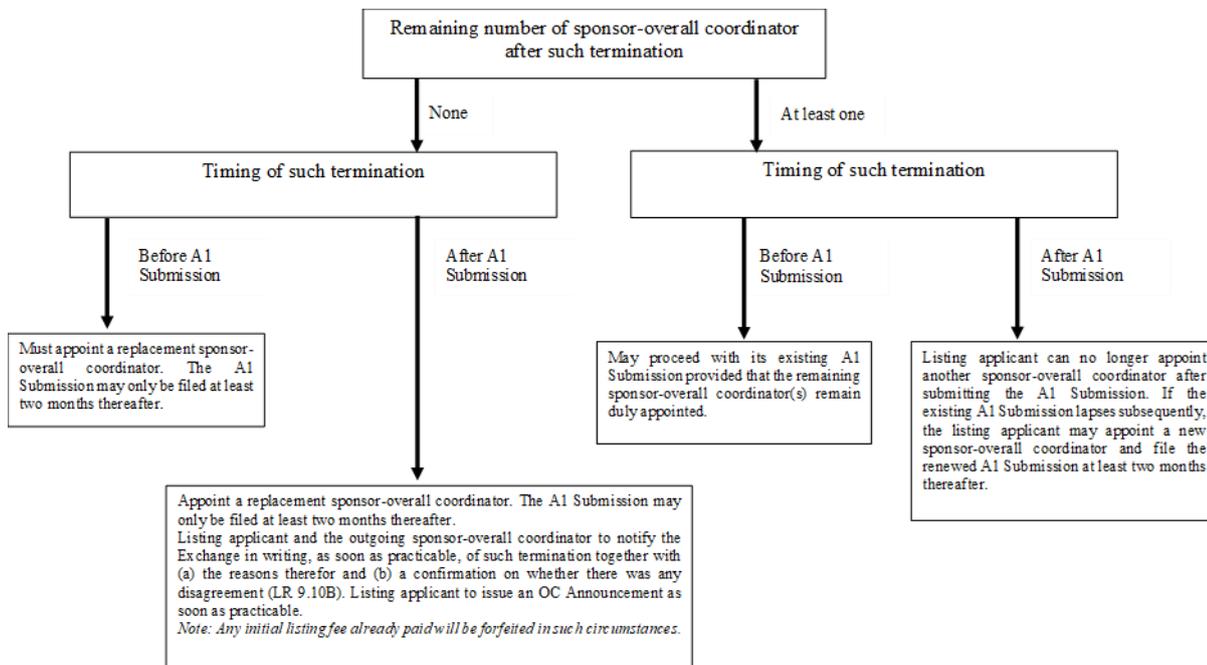
¹⁵ There are no specific rules or FAQs requiring the sponsor engagement and sponsor-overall coordinator engagement to be made in the same engagement letter.

| | Date of Sponsor's Engagement Letter, A1 Submission and Re-filing | Transitional Arrangement | Suggested Action Plan with respect to the Sponsor's Engagement Letter |
|----|--|---|---|
| | | | For a sponsor not acting as overall coordinator - obtain a written confirmation from the listing applicant that at least one sponsor-overall coordinator has been appointed in accordance with LR3A.43. |
| 2. | <p><i>First-time listing application (and subsequent re-filing) on or after August 5, 2022</i></p> <p><i>Date of Sponsor's Engagement Letter: before April 22, 2022</i></p> <p><i>Date of A1 Submission (and subsequent re-filing): on or after August 5, 2022</i></p> | <p>The Exchange would accept the sponsor-overall coordinator being duly appointed for the purpose of LR3A.43 (even though its appointment as an overall coordinator was not made at the same time as it or its group company was appointed as a sponsor) if:</p> <p>(i) the new applicant has already appointed an independent sponsor before April 22, 2022, and the notification of the sponsor engagement has been submitted to the Exchange before April 22, 2022;</p> <p>(ii) the independent sponsor referred to in condition (i) above or its group company has also been appointed as an overall coordinator for the purpose of LR3A.43 before August 5, 2022 and at least two months before the submission of the re-filing; and</p> <p>(iii) the engagements of such sponsor and overall coordinator remain valid and effective as at the time of the re-filing; and</p> <p>(iv) where applicable, the re-filing is submitted within three months from the lapse of the last listing application.</p> | <p><i>To meet the conditions under the "Transitional Arrangement":</i></p> <p>As soon as practicable, enter into an agreement with the new applicant on the role of overall coordinator before (i) August 5, 2022 and (ii) at least two months prior to the A1 Submission or re-filing, whichever is earlier, and notify the Exchange¹⁴. The agreement on overall coordinator role should be entered into <i>no later than August 4, 2022 in any event</i>. As such, if the A1 Submission or the re-filing of which is intended to take place as early as August 5, 2022, the agreement should be entered into no later than June 5, 2022.</p> <p><i>If the conditions under "Transitional Arrangement" are not expected to be met:</i></p> <p>For a sponsor-overall coordinator—Terminate the existing sponsor engagement, enter into new engagement letter(s)¹⁵ to act as a sponsor and an overall coordinator (or have an intermediary within its group of companies enter into a new engagement letter to act as an overall coordinator) at the same time and notify the Exchange¹⁴. The earliest re-filing date will be two months after the execution of such engagement letter(s).</p> <p>For a sponsor not acting as overall coordinator—obtain a written confirmation from the listing applicant that at least one sponsor-overall coordinator has been appointed in accordance with LR3A.43.</p> |
| 3. | <p><i>Date of Sponsor's Engagement Letter: before April 22, 2022</i></p> | <p>The Rule Amendments will not apply to such A1 Submission and re-filing (even if their bookbuilding, placing or allocation activities conducted in connection with their</p> | N/A |

| | Date of Sponsor's Engagement Letter, A1 Submission and Re-filing | Transitional Arrangement | Suggested Action Plan with respect to the Sponsor's Engagement Letter |
|----|---|--|---|
| | <i>Date of A1 Submission AND expected date of re-filing: before August 5, 2022</i> | proposed offerings take place on or after August 5, 2022). | |
| 4. | <i>Date of Sponsor's Engagement Letter: before April 22, 2022 Date of A1 Submission: before August 5, 2022 (with no expectation of re-filing)</i> | The Rule Amendments will not apply to such A1 Submission (even if their bookbuilding, placing or allocation activities conducted in connection with their proposed offerings take place on or after August 5, 2022). | If re-filing is subsequently envisaged to take place on or after August 5, 2022, please refer to item 1 above in this table. |
| 5. | <i>Date of Sponsor's Engagement Letter: on or after April 22, 2022 Date of A1 Submission: on or after August 5, 2022</i> | No transitional arrangement is available. | <p><i>If no sponsor appointment has been made:</i></p> <p>Enter into engagement letter(s)¹⁵ to act as a sponsor and an overall coordinator (or have an intermediary within its group of companies enter into a new engagement letter to act as an overall coordinator) at the same time and notify the Exchange¹⁴.</p> <p><i>If a sponsor appointment has been made (without the appointment of sponsor-overall coordinator at the same time):</i></p> <p>For a sponsor-overall coordinator – Terminate the existing sponsor engagement, enter into new engagement letter(s)¹⁵ to act as a sponsor and an overall coordinator (or have an intermediary within its group of companies enter into a new engagement letter to act as an overall coordinator) at the same time and notify the Exchange¹⁴. The earliest re-filing date will be two months after the execution of such engagement letter(s).</p> <p>For a sponsor not acting as overall coordinator—obtain a written confirmation from the listing applicant that at least one sponsor-overall coordinator has been appointed in accordance with LR3A.43.</p> |

2.6 Implications of Termination of Sponsor-Overall Coordinator Engagement

For Main Board IPOs, at least one sponsor-overall coordinator must remain appointed throughout the listing process (i.e. the sponsor-coupling requirement). The implication of termination of the engagement of any duly appointed sponsor-overall coordinator is set out in the flow chart below:



3 New Code Provisions

For completeness and to remind the CMLs of their obligations under the New Code Provisions, we also summarized below key features introduced by the new paragraph 21 of the Code of Conduct:-

3.1 Types of Offerings Covered

Types of offerings covered under paragraph 21 of the New Code Provisions are (Paragraph 21.1.2(a) of the New Code Provisions):

- a. Debt offerings (i.e. an offering of debt securities listed or unlisted, and offered in Hong Kong or otherwise) (Note: No specific amendments will be made to the Listing Rules relating to the placing of debt securities);
- b. Share offerings (i.e. an offering of shares listed or to be listed on the Exchange) (LR3A.32)
 - i. a placing of equity securities, interests in a REIT, stapled securities and securities of an investment company (the “Equity Interests”) to be listed on the Exchange, including:
 - a placing in connection with a new listing of Equity Interests issued by a new applicant (including a reverse takeover and a transfer of listing of Equity Interests from GEM to Main Board, the “New Listing”) (whether by way of a primary listing or secondary listing); and
 - a placing of Equity Interests of a class new to listing or new Equity Interests of a class already listed under a general or specific mandate; and
 - ii. a placing of listed Equity Interests by an existing holder of Equity Interests if it is accompanied by a top-up subscription by the existing holder of Equity Interests for new Equity Interests in the issuer.

References to “debt offering” and “share offering” in this article shall carry the same meaning as defined in this section 3.1.

3.2 “Specified Activities”

“Specified activities” cover the following activities conducted by the intermediaries (*Paragraph 21.1.1 of the New Code Provisions*):

- a. Bookbuilding activities, i.e.
 - i. Collating investors’ orders (including indications of interest) in an offering in order to facilitate a) the price determination and the allocation of shares or debt securities to investors, or b) the process of assessing demand and making allocations;
- b. Placing activities, i.e. marketing or distributing shares or debt securities to investors pursuant to the bookbuilding activities; and
- c. Advising, guiding and assisting the issuer client for the abovementioned activities.

Note 2 in FAQ#3: If a CMI does not perform, and is not and will not be appointed to perform the specified activities in offerings covered under paragraph 21 of the New Code Provisions, the requirement under LR3A.33 will not apply to that CMI.

3.3 “Sponsor-Coupling” Requirement

“Sponsor-coupling” requires that at least one overall coordinator, which is either within the same legal entity or the same group company, also acts as a sponsor for Main Board IPOs. The SFC explained that the spirit of introducing sponsor-coupling requirement takes into account the fact that fees are currently not aligned with sponsor costs and responsibilities, putting sponsors under undue pressure to comprise their due diligence to secure their appointment as overall coordinators.

3.4 Key Obligations and Standards Required of CMIs

Pursuant to paragraph 21.3 of the New Code Provisions, the key obligations and standards required of CMIs include:

- Assessment of the issuer and the offering before engaging in a share or debt offering for that issuer client.
- Appointment under written engagement agreement before conducting any specified activities (*Reflected in LR3A.33 and LR3A.34*)
- Assessment of investor clients¹⁶: A CMI should take reasonable steps to assess whether its investor clients fall within the types of targeted investors. In the case of a share offering, a CMI should take all reasonable steps to identify investor clients to whom the allocation of shares will be subject to restrictions or require prior consent from the Exchange and inform the overall coordinator (whether directly or indirectly) before placing an order on behalf of such clients.
- Marketing: A CMI should only market the shares or debt securities to its investor clients which are targeted investors. In the case of a share offering, where the shares are only marketed to selected investor clients, the CMI should be further satisfied that the shares have been marketed to a sufficient number of clients to prevent concentration of holdings.

¹⁶ Refers to clients of the CMIs who are potential placees in the offerings.

- Management of order book: A CMI should ensure that the price discovery process is credible and that the order book is transparent and incorporates only bona fide orders. Identities of all investors are required to be disclosed in the order book, with the exception of orders placed on an omnibus basis, in which case information about the underlying investors (i.e. the investor client's name and unique identification number) should be provided to the overall coordinator and the issuer.
- Implementation of allocation policy to ensure fair allocation of shares or debt securities to investor clients.
- No rebate or preferential treatment to investor clients: In both debt offerings and share offerings, a CMI should not offer any rebate to its investor clients or pass on any rebates provided by the issuer. For an IPO, a CMI should not enable any investor clients to pay, for each of the shares allocated, less than the total consideration as disclosed in the listing documents; while for a debt offering, a CMI should not enter into any arrangements which may result in investor clients paying different prices for the debt securities allocated.
- Disclosure of information on the status of the order book and other relevant information to overall coordinators, non-syndicate CMIs and targeted investors in a timely manner.
- Record keeping policies: A CMI should maintain proper audit trails, books and records, including, among others, (i) assessment of the issuer client, share or debt offering and investor clients, (ii) key communications with the issuer client, overall coordinator and other CMIs, and (iii) rebates offered by the issuer client and payment details.
- Conflicts of interest policies: Establishment and implementation of policies and procedures to (i) identify, manage and disclose actual and potential conflicts of interest with investor clients and (ii) govern the process for generating proprietary orders as well as making allocations to such orders. Further, in case of conflicts, a CMI should always give priority to satisfying investor clients' orders over its own proprietary orders and those of its group companies.
- Maintenance of sufficient resources, systems and controls to discharge obligations and responsibilities, e.g. implementation of Chinese walls, risk assessment of orders and allocations, appointment of non-syndicate CMIs, surveillance and monitoring, etc.
- Communication with the SFC and the Exchange in an open and cooperative manner.

3.5 Key Obligations and Standards Required of Overall Coordinators

Pursuant to paragraph 21.4 of the New Code Provisions, the key obligations and standards required of overall coordinators include:

Appointment under written engagement agreement before conducting any specified activities. (*Reflected in LR3A.35 and LR3A.36*)

- In the case of Main Board IPOs, an overall coordinator should (i) ensure that it (or one of its group companies) is also appointed as a sponsor; or (ii) obtain a written confirmation from the listing applicant that at least one sponsor-overall coordinator has been appointed. (*Reflected in LR3A.02*)
- Advice to the issuer: An overall coordinator in a share offering should advise the issuer on the pricing and the market's fee split practice to be paid to the syndicate CMIs. It should advise and guide the issuer client and its directors as to their responsibilities under the Listing Rules and other applicable regulatory requirements which apply to placing activities and take reasonable steps to ensure that they understand and meet these responsibilities.

- Marketing, rebates and preferential treatment offered: An overall coordinator should advise the issuer of the disclosure of any rebates and preferential treatment to the CMIs. It should advise the issuer against providing any arrangements whereby, in the case of an IPO, the investor clients would pay, for each of the shares allocated, less than the total consideration as specified in the listing documents.
- Bookbuilding: An overall coordinator should ensure that the price discovery process is credible and transparent, take reasonable steps to properly manage an order book and ensure its transparency, including ensuring that the identities of all investor clients are disclosed in the order book, advise the issuer client on the pricing with reference to a spectrum of factors, develop and maintain an allocation policy etc.
- Assessment of investors: In an IPO, an overall coordinator should (i) advise the issuer to provide to all syndicate CMIs a list of its directors, existing shareholders and their respective close associates and nominees engaged by the issuer's directors and existing shareholders for the subscription or purchase of shares offered in the IPO; and (ii) take all reasonable steps to identify investors on that list and ensure that they will only be allocated shares in accordance with the applicable regulatory requirements.
- Disclosures to syndicate CMIs of the issuer client's marketing and investor targeting strategy and dissemination of material information related to the offering in a timely manner to all syndicated CMIs.
- Record keeping policies: An overall coordinator should maintain proper record of all changes in the orders in the order book throughout the bookbuilding process and all key discussions with, and key advice or recommendations provided to, the issuer, etc.
- Communication with the SFC: An overall coordinator should report and provide the following to the SFC in a timely manner: (i) any instances of material non-compliance with the regulatory requirements, (ii) any material changes to the information previously provided to the SFC and the Exchange, (iii) reasons for ceasing to act as an overall coordinator in share offerings, where applicable, and (iv) other information as the SFC may require from time to time. *(Reflected in LR3A.41)*

THIS NEWSLETTER IS INTENDED ONLY AS A GENERAL DISCUSSION OF THESE ISSUES. IT SHOULD NOT BE REGARDED AS LEGAL ADVICE. WE WOULD BE PLEASED TO PROVIDE ADDITIONAL DETAILS OR ADVICE ABOUT SPECIFIC SITUATIONS IF DESIRED. IF YOU WISH TO RECEIVE MORE INFORMATION ON THE TOPICS COVERED IN THIS PUBLICATION, YOU MAY CONTACT YOUR USUAL SHEARMAN & STERLING REPRESENTATIVE OR ANY OF THE FOLLOWING:

CONTACTS



KYUNGWON (WON) LEE
Partner
Hong Kong
kyungwon.lee
@shearman.com



WANDA WOO
Partner
Hong Kong
wanda.woo
@shearman.com



LEO WONG
Counsel
Hong Kong
leo.wong
@shearman.com



CHAOYI FENG
Associate
Beijing
chaoyi.feng
@shearman.com



WENXIN GU
Associate
Shanghai
wenxin.gu
@shearman.com