



HONG KONG MONETARY AUTHORITY  
香港金融管理局

Our Ref: B1/15C

29 April 2022

The Chief Executive  
All Authorized Institutions

Dear Sir / Madam,

**Temporary Protection Measures for Business Tenants (COVID-19 Pandemic) Ordinance (“Ordinance”)**

I write to draw your attention to the passage of the Temporary Protection Measures for Business Tenants (COVID-19 Pandemic) Bill by the Legislative Council on 28 April 2022, and to provide guidance on the steps that authorized institutions (AIs) should take to comply with the Ordinance.

As an initiative announced by the Financial Secretary in this year’s Budget, the Ordinance aims to mitigate the impact of COVID-19 on business tenants of certain premises by providing for a protection period (generally three months from the commencement of the Ordinance) within which landlords are barred from taking certain actions in respect of their tenants’ failure to pay the rent. To support landlords facing cashflow difficulties as a result of the rental enforcement moratorium, the Ordinance correspondingly provides for a period within which a lender (including an AI), which has provided a loan secured by such (tenanted) premises (“secured loan”), is barred from taking certain actions in respect of a repayment default where certain conditions are satisfied.

The Ordinance ceases to apply if the lender has entered into a written agreement with the landlord during the protection period that provides for forbearance in respect of the repayment schedule for, or the amount of any repayment of, the loan secured by such (tenanted) premises. Save for this, the Ordinance prohibits lenders from taking specified enforcement actions in relation to the secured loan where: (a) the tenant fails to pay the rent and the landlord is debarred by the rental enforcement moratorium provisions in the Ordinance from taking action against the tenant; (b) there is a default in payment of the secured loan between 1 January 2022 (or, if an underlying tenancy only comes within the scope of the Ordinance during the protection period, the date upon which the Ordinance becomes applicable) and the end of the protection period (unless the rental enforcement moratorium provisions of the Ordinance cease to apply earlier in a given case); and (c) the landlord can reasonably establish that the tenant’s failure to pay the rent and the rental enforcement moratorium imposed by the Ordinance are the sole reason or a significant reason for the landlord’s inability to avoid

a repayment default. The prohibited enforcement actions include, among others, suing for repayment, taking possession of the property, petitioning for the bankruptcy of the landlord, and making demand against the landlord under any other right of recourse as a result of the repayment default triggering any contractual cross-default clause. Any pending action by the lender for a payment default from 1 January 2022 will be stayed whilst the rental enforcement moratorium is in effect. Contravention of the prohibition is an offence and the lender will be liable to a fine on conviction.

As stated in the HKMA's circular of 23 February 2022, AIs are expected to play their part in assisting the delivery of Government initiatives announced in the Budget to support the community facing temporary financial difficulties. They should study the Ordinance carefully and be mindful of the applicable legal requirements when dealing with any affected landlords (which, where specified by the Ordinance, will include obligors, guarantors and other sureties). Specifically, the HKMA would expect and would strongly encourage AIs to waive any penalties or late charges incurred by the landlords as a result of a failure of payment protected by the Ordinance. Likewise, in such circumstances, the HKMA would expect that, whilst interest may continue to be accrued on the unpaid principal amount, interest would not be accrued on unpaid interest. AIs should be prepared to extend the loan tenor correspondingly if they are so requested. AIs should also refrain from any actions in respect of loan covenant breaches by customers as a result of the rental enforcement moratorium.

In addition to complying with the Ordinance, the HKMA continues to expect AIs to offer credit relief, on the basis of the Pre-approved Principal Payment Holiday Scheme (PPPHS), to landlords encountering cashflow problem where appropriate. At present, the PPPHS already covers smaller corporate borrowers (i.e. corporates with annual sale turnover of no more than HK\$800 million) which have outstanding loans secured by properties. For these customers which encounter repayment difficulty as a result of the Ordinance, AIs should assist them in understanding the protection afforded by the Ordinance and the relief available under the PPPHS. In cases where customers consider the PPPHS to be more suitable for their circumstances and decide to take up the relief thereunder, AIs should advise them whether the protection afforded by the Ordinance will cease by virtue of section 4 of the Ordinance. Section 4 of the Ordinance states that once a written agreement is entered into during the protection period for forbearance in relation to the timing or amount of repayments of a relevant secured loan, the Ordinance ceases to apply. AIs should seek legal advice to ascertain whether their existing processes and documentation in relation to the PPPHS constitute a "written agreement" within the meaning of section 4 of the Ordinance.

AIs should refer to the HKMA's earlier circulars on PPPHS in handling applications by eligible corporate landlords. As in the past, the PPPHS operates on an opt-in basis. AIs need not issue individual notifications to eligible customers. They should handle each eligible application on a pre-approved basis.

The HKMA expects AIs to offer the same treatment under the PPPHS to landlords affected by the Ordinance who are individuals. In other words, the credit relief

available under the PPPHS should be offered to these landlords if they so request. As for larger corporate landlords falling outside of the PPPHS which face repayment difficulty as a result of the Ordinance, AIs should adopt a sympathetic attitude and identify, in consultation with their customer, a feasible solution consistent with prudent risk management principles.

Making reference to the PPPHS, non-repayment of debt covered by the Ordinance will not by itself result in a loan being downgraded, nor will it cause the loan to be categorised as “rescheduled” as long as the terms of the loan remain commercial. That said, AIs should continue to recognise and classify loans of customers which are unable to meet the rescheduled payments in a timely manner, referencing the HKMA’s Guideline on Loan Classification System, and to make adequate provisions as and when needed. The HKMA will collect from AIs relevant statistics to monitor compliance with the requirements in this letter.

If you have any questions about the circular, please approach your usual contact at the Banking Supervision Department.

Yours faithfully,

Arthur Yuen  
Deputy Chief Executive