

## Managing the impact of the novel coronavirus outbreak – a brief guide for SFC-licensed businesses



The Securities and Futures Commission (the “**SFC**”) have in previous years issued various guidance<sup>1</sup> on the measures that licensed corporations (“**LCs**”) should implement to manage the effects of serious infectious disease outbreaks, such as SARS, influenza and now the novel coronavirus (“**COVID-19**”) outbreak.

More recently, the SFC released a [circular](#) on 5 February 2020 acknowledging that the COVID-19 outbreak may cause delays to “business as usual” operations for the SFC, LCs and applicants. The SFC notes that there may be delays in response times in some areas such as licensing applications, product applications and the public complaints and enquiry service.

Generally, the SFC expects LCs to implement an effective business continuity plan (“**BCP**”) appropriate to their scale of business to limit the impact of these extraordinary events on their business, operations and clients. LCs are also expected to make reasonable efforts to maintain “business as usual” in relation to their regulatory obligations such as those regarding notifications, filings, reporting and other deadlines. If LCs expect to encounter specific difficulties or delays, they are expected to communicate promptly with their usual contacts at the SFC.

### Reviewing and implementing an LC’s BCP

LCs should consider adopting the following measures in their BCPs to prevent material disruption to their operations in light of the COVID-19 outbreak (the below measures should not be taken to be exhaustive or comprehensive):

#### *Oversight and monitoring*

- Establishing a crisis management structure for information sharing to all levels within the organisation, to facilitate decision-making and to revise any aspect of the BCP in accordance with the latest developments of the COVID-19 outbreak.

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<sup>1</sup> See the relevant SFC circulars at:

<https://www.sfc.hk/edistributionWeb/gateway/EN/circular/openFile?refNo=H289>

<https://www.sfc.hk/edistributionWeb/gateway/EN/circular/openFile?refNo=14EC32>

<https://www.sfc.hk/edistributionWeb/gateway/EN/circular/openFile?refNo=H407>

<https://www.sfc.hk/edistributionWeb/gateway/EN/circular/openFile?refNo=H551>

- Assigning at least one senior staff member to take care of the planning and implementation of the BCP such as:
  - identifying critical systems and functions (including outsourced functions);
  - activating the BCP at the appropriate time;
  - overseeing the business recovery process;
  - communicating with other employees about the process; and
  - coordinating with the relevant external parties to resume business operations, etc.

#### *Staff arrangement*

- Establishing appropriate measures to ensure a minimum level of service can be delivered to clients in an emergency, such as:
  - implementing split team arrangements;
  - establishing a back-up or alternative office from where critical operations and services can be maintained; and/or
  - enabling staff to work from home, whilst ensuring there are sufficient equipment and devices to support the above measures.
- Ensuring sufficient back-up personnel for key staff members who are either suspected or has been diagnosed with COVID-19.
- Following the guidance of the Centre for Health Protection and the Department of Health in Hong Kong in maintaining a clean and healthy work environment, and encouraging staff members to maintain good personal hygiene.
- Establishing an emergency communication plan to keep all key staff members up-to-date with the latest developments, and ensuring the relevant contact details are up-to-date.

#### *Service providers or other third parties*

- Planning ahead for contingency closing-out of positions, clearing and settlement matters with counterparts or exchanges, if needed.
- If the LC is an Exchange Participant<sup>2</sup>, to put in place alternative trading arrangements to effect client orders, such as trading via another Exchange Participant on its behalf or to use back-up terminals provided by the exchanges.
- Ensuring that service providers and suppliers have appropriate contingency plans in place.
- Establishing an emergency communication plan to keep to all service providers and counterparties up-to-date, and ensuring the relevant contact details are up-to-date.

#### *Customers*

- Encouraging customers to use telephone or online facilities in place of physical visits to a branch or office of an LC.

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<sup>2</sup> An Exchange Participant is a corporation who may trade on or through the Stock Exchange of Hong Kong and is licensed under the Securities and Futures Ordinance to carry on securities/futures/options dealing activity.

- Establishing an emergency communication plan to keep to all clients up-to-date and advising clients on any relevant contingency measures in relation to the services provided to them.

#### *Infrastructure capacity*

- Ensuring that there is sufficient infrastructure capacity to support contingency measures (such as alternative work arrangements) for a prolonged period and increased demand for online and self-service options.
- Ensuring that critical business and transaction data are regularly stored and backed-up and to ensure that the back-up data can be available for use in the LC's back-up computer system within a reasonable timeframe.
- Ensuring that telephone recording systems, computing and communication devices as well as back-up facilities for IT systems are adequate.

#### *Insurance coverage*

- Assessing the quantum of potential claims from clients in the event that an LC cannot provide the usual level of services to clients and the adequacy of the LC's existing insurance coverage.

### **Notification and record-keeping obligations**

In light of the current situation, LCs should take note of the regulatory requirements regarding (a) the notification of certain events arising from changes to their business and operations and (b) the keeping of records arising from alternative work arrangements set out above.

#### *Notification obligations*

In previous circulars issued during similar circumstances, the SFC expects LCs to notify their licensing relationship manager immediately if any staff member is suspected of or has been diagnosed as having a serious infectious disease, and to keep the SFC informed of any subsequent developments.

LCs should also consider whether any change to its business and operations resulting from the COVID-19 outbreak would trigger a notification requirement to the SFC under the Securities and Futures (Licensing and Registration)(Information) Rules. Certain events such as (but without limitation to):

- significant changes in the nature of the business carried on or the types of services provided by the LC;
- significant changes in the business plan of the LC, which extends to its internal controls, organisational structure (such as managers-in-charge), contingency plans and related matters; and
- changes in the address of each of the premises where the business of the LC is, or is to be, conducted, must be notified to the SFC within 7 business days after the change takes

place. LCs should therefore consider whether notifications are needed as a result of any changes to its business and operations.

#### *Record-keeping requirements*

Under the Securities and Futures Ordinance (the "**SFO**"), the records and documents of an LC must be kept at SFC-approved premises in Hong Kong. Therefore, where alternative work arrangements (outside SFC-approved premises) are in operation, such as back-up or alternative office site(s) or where staff members are working from home, an LC should ensure that it continues to comply with its record-keeping obligations. Documents (including physical files) should be handled, saved and stored in accordance with the LC's prevailing procedures to ensure compliance with the relevant requirements.

#### **Concluding remarks**

The HKSAR Government announced on 27 February that Government offices, which presumably include the SFC for this purpose, will be taking steps starting on 2 March towards resuming normal public services, though it will no doubt take some time for the SFC to clear its backlog of licensing and product applications, etc. and fully resume its normal services.

We have for many years been advising Hong Kong and overseas clients on SFO-related issues. If you have any questions in relation to the above, please get in touch with us for a discussion. We would be pleased to speak with you.

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