

**GUIDELINES FOR SHARING DUE DILIGENCE MATERIALS
AMONG SYNDICATE MEMBERS ON HK IPOs (December 2020)**

Background

It is common in HK IPOs for non-sponsor syndicate members to be mandated and brought onto the transaction at different stages during the execution timetable. Questions are often raised as to the level of access to due diligence materials produced during the transaction which such non-sponsor syndicate members should be entitled to.

These guidelines set out practical guidance which have been endorsed by ASIFMA as reflecting good industry practices for the HK IPO market. The guidelines are directed towards deal teams of both the lead banks and the more junior banks in the syndicate and to law firms acting for the underwriters.

Legal principle underpinning the practical guidance

Syndicate members in a HK IPO should be enabled to carry out due diligence on an issuer whose shares they will be involved in the distribution of in order for them to manage their risks appropriately, whether legal, regulatory, reputational or howsoever.

Practical guidance

1. Once a firm is confirmed in writing by the Company to underwriters' external counsel as being in the syndicate, it should be entitled to carry out due diligence in a timely manner. The sponsors should be notified of any additions to the syndicate as soon as the additional engagements are confirmed.
2. Each syndicate member should, with the advice of underwriters' external counsel, consider its due diligence obligations and the level of due diligence it wishes to carry out.
3. In providing its advice, underwriters' external counsel should be entitled to provide a reasonably detailed summary of the legal due diligence process undertaken, any material issues that have arisen during the due diligence process, and the resolution or proposed resolution of such issues. Upon request by a syndicate member, this may include (but need not be limited to) access to underlying source materials (including any verification notes and backup data) in the possession of underwriters' external counsel.
4. Any documents addressed to (or stated to be for the benefit of) the underwriters (e.g., legal opinions, comfort letters, internal control reports, industry reports) should be shared with all the members of the syndicate in a timely manner to allow for sufficient time for review. To the extent any such documents are subject to confidentiality obligations, consents should be obtained to allow these documents to be shared with all members of the syndicate. To the extent certain members of the syndicate have commissioned the production of additional diligence materials (e.g., background reports), it will be left to those syndicate members and the other syndicate members to determine if those materials should be shared and the terms of sharing those materials (e.g., contributing to the

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costs of such reports and obtaining consents from the publishers of the report to access and rely on such reports). An un-redacted version of the filed application proof of the listing document should be provided if requested by a syndicate member.

5. No party should impede underwriters' external counsel from assisting a syndicate member's due diligence work, or from disclosing any material due diligence issues identified during the due diligence process. In particular, it is acknowledged that, by virtue of one single external counsel firm advising all of the underwriters, the duties of confidentiality under The Hong Kong Solicitors' Guide to Professional Conduct requires such external counsel firm to advise all underwriters that no information received in connection with the transaction from one of the underwriters can be treated as confidential so far as any of the other underwriters are concerned.
6. If the underwriters' external counsel enters into an engagement letter with the Company, the underwriters' external counsel should seek in such engagement letter the Company's acknowledgement that due diligence records and documents of the Company in its possession as a result of the transaction will be shared with all syndicate members.