

PROJECT PROSPERITY

LEGAL OPINION

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INTRODUCTION

1. I refer to the instructions of King & Wood Mallesons (“**KWM**”) dated 4 November 2022 (as supplemented by their subsequent email dated 7 July 2023) (“**KWM’s Instructions**”). KWM acts for: (a) K Cash Limited (“**KC**”) and (b) K Cash Express Limited (“**KC-Ex**”). KC and KC-Ex shall be collectively referred to herein as the “**Subsidiaries**”.
2. After restructuring, an overseas company, K Cash Corporation Limited (previously known as K Cash Fintech Corporation Limited) (“**Listing Entity**”), will be incorporated as the parent company of the Subsidiaries with part of its shares intended to be listed on The Stock Exchange of Hong Kong Limited (“**Stock Exchange**”).
3. In this Legal Opinion, the Subsidiaries and the Listing Entity shall be collectively referred to as the “**Group**”, while the intended listing shall be referred to as the “**Proposed Listing**”. Unless otherwise stated, my opinion expressed herein shall only relate to the Subsidiaries’ activities and compliance for the period between 1 January 2020 and 31 May 2023 (“**Relevant Period**”).

THE SUBSIDIARIES

(a) Corporate History

4. KC was incorporated in Hong Kong on 4 March 2008 under its former name ‘Ever Concept Holdings Limited’. KC has subsequently undergone several name changes, including: (a) ‘Maxcolm Credit Limited’ on 27 May 2009; (b) ‘mtree.money Limited’ on 30 November 2015; and (c) ‘K Cash Limited’ on 25 July 2016. Before 6 June 2020, KC was wholly owned by Konew Credit Corporation Limited (“**Konew Credit**”). KC is now wholly owned by K Cash (BVI) Limited (“**KC-BVI**”).
5. KC-Ex was incorporated in Hong Kong on 24 February 1999 under its former name ‘Konew Business Development Limited’. KC-Ex has subsequently undergone several name changes, including: (a) ‘Winston Credit Limited’ on 14 May 2003; (b) ‘Konew

Financial Express Limited’ on 6 September 2005; and (c) ‘K Cash Express Limited’ on 22 November 2022. KC-Ex is now wholly owned by Konew Credit.¹

(b) Management

6. The Subsidiaries are now respectively managed by board of directors of the same composition, including:-

- (1) Mr. Lee Sheung Shing (“**SS Lee**”);
- (2) Ms. Lee Pik Tsong (“**PT Lee**”); and
- (3) Mr. Lee Kun Tai, Steven (“**KT Lee**”).

7. KT Lee also acts as the current company secretary of both of the Subsidiaries.

THE BUSINESS

(a) Business Model

8. During the Relevant Period, the Subsidiaries are principally engaged in money lending business (with a focus on un-secured loan business through fintech) in Hong Kong. KC and KC-Ex are both holders of money lenders licences (respectively no.1561/2022 (“**KC’s Licence**”) and nos.0975/2022 & 0885/2023 (“**KC-Ex’s Licence**”)).

9. The Business comprises of: (a) unsecured personal loans offered to individuals including ‘7 x 24 AI loan’ (“**Personal Loan**”);² (b) unsecured loans offered to small-to-medium enterprises (“**SME**” and “**SME Loan**”)³ and (c) unsecured loans offered to owners of properties who do not provide any collaterals for the loan (“**Property Owner Loan**”).

(b) Financial Technologies

Video Teller Machines

¹ After reorganization of the Group for the Proposed Listing, KC-Ex will be wholly owned by K Cash Express (BVI) Limited (“**KC-Ex BVI**”).

² A loan in which approval process is fully automated. The service is provided through a webcam function linked to the offices where application queries would be answered and identity verification would be performed for drawdown and/or loan repayment.

³ Subject to personal guarantee typically provided by director(s) and/or shareholder(s) of SME borrower.

10. Since 2015, the Group (in particular KC) has introduced the use of video teller machines (“VTMs”), which are digital teller machines providing loan drawdown and repayment services.
11. To enhance security, optical character recognition (“**Facial Recognition**”) and finger vein scanning (“**Finger Vein Scanning**”) capabilities of VTMs have been developed and placed into operation to conduct identity verification during drawdown.

Intelligent Dynamic Credit Matrix

12. Initial applications of loans are reviewed based on the applicant’s information and his credit ratings under the intelligent dynamic credit matrix (“**IDCM**”), which entails a credit score (“**AQM Score**”) and a machine learning-based credit score (“**MLC Score**”)⁴ for the purpose of generating the appropriate pricing for a particular loan applicant.
13. In generating the AQM and MLC Scores, IDCM makes use of past customers information and their loan records with the Group to analyze the behavioral pattern of loan applicants to find out the changes or magnitude on various attributes so as to identify potentially higher risk customers. Upon analysis, the customers would be classified into Tiers I, II and III in ascending order of credit risk.
14. According to the Group, IDCM is a standalone machine learning system developed by Accenture using Python targeting to classify customers into different gradings with specific sets of criteria and database. The Group owns the source code, the right of usage and development of the IDCM system. The Group compares IDCM to the system used by TransUnion (環聯) (“**TU**”) which provides credit rating and report service in the market.

SME Business Dashboard

15. Since 2019, the Group has introduced the SME Business Dashboard (“**SME Dashboard**”) to the Business. The SME Dashboard is provided by ‘trustME’ (a connected person of

⁴ The credit modelling system was developed in 2019 through engaging the service of Accenture Company Limited.

the Group which provides forerunner blockchain technology since 2018) and the Group is only the user.

16. Using the SME Dashboard, the Group reviews the key financial performance indicators (e.g. turnover, cashflow) of the SME borrowers (who operate a compatible POS system) on a daily basis via charts and summaries through an interactive data visualization software.

Robotic Process Automation

17. The Group uses robotic process automation (“**RPA**”) to perform property valuation, credit report retrieval, anti-money laundering checking, TU checking and online land search. RPA helps to reduce manual operation and human resources.

Blockchain Technology

18. A blockchain is a series of time-stamped and immutable data records managed by a cluster of computers not owned by any single entity. The Group launched the Blockchain platform (“**BC Platform**”) in the form of a proprietary blockchain-based loan record database based on a permission-based ledger technology to detect duplicate or fraudulent loan applications in the case where the applicants apply for various loan products at the same time. The BC Platform was designed specifically for the Group’s operations. Particularly, the applicant’s personal or corporate identification information are verified via the blockchain technology at the application stage. The Group has internally engaged a team of in-house blockchain engineers to support the operational needs. Under the BC Platform, loan agreements are recorded on a distributed digital ledger which allows for secure, transparent and traceable data sharing as well as immutability of loan contracts and record. Staff information of frontline staffs are also registered in the BC Platform and customers would be able to validate the identity of the staff through QR code.
19. On about 28 February 2023, KC-Ex entered into a platform collaboration agreement (“**Collaboration Agreement**”) with River Square Company Limited (“**River Square**”), under which River Square agreed to provide service of a blockchain technology platform called “Riverchain” developed and operated by River Square or its affiliates (“**Platform**”).

Service”) to KC-Ex for use in respect of its loan services in consideration for payment of service fee. The Platform Service shall be effective for one year and renewable yearly.

Cloud Computing

20. The Group introduced the use of cloud computing since 2018 through purchasing the licence from Microsoft Azure. All loan systems, Mobile App and website are hosted on Microsoft Azure.

(c) New Business Developments

21. Since about January 2021, the Group has been exploring new business, including: (a) the loan participation scheme with Japanese bank (“**LP Scheme**”) and (b) a ‘buy now, pay later’ scheme with VISA (“**BNPL**”).

22. LP Scheme and BNPL are still at the explorative stage. It was confirmed by the Group that neither the LP Scheme nor BNPL have been provided to its customers during the Relevant Period.

LP Scheme

23. The LP Scheme is set to commence in March 2023 through a collaboration between KC and a Japanese bank (but has not commenced as of the date of this legal opinion). The mechanism of the LP Scheme is constituted by two major legal instruments, namely:-

- (1) A Master Participation Deed (“**Master Deed**”) to be entered into between KC and Orix Finance Services Hong Kong Limited (“**Orix**”), under which KC will, at its discretion, allow Orix to participate in some of its unsecured loan business by assigning to it certain portion of the loan from the borrowers;
- (2) A Declaration of Trust (“**D/T**”) to be entered into between KC and Orix, under which KC will hold 70% of the right, title and interest of the loan on trust for the benefit of Orix for a specified duration.

24. The Group regarded the LP Scheme as a win-win situation as Orix could invest the funds to a business with higher yield at an acceptable risk level, while the Group could leverage the opportunity to obtain additional funding to expand the Business at its discretion as long as the required criteria were fulfilled.

BNPL

25. BNPL is a type of short-term financing which allows consumers to make purchases and pay for them at a future date, often interest-free. It is a type of unsecured personal loan, which means the loan does not require any type of collateral. The BNPL platform generally does not set an income threshold for consumers and also allows consumers to pay by interest-free instalments, while the fine and handling fees incurred by consumers for late payment are relatively low. BNPL is still under an emerging market in Hong Kong.
26. In terms of business model, retailers that partner with BNPL providers can offer customers the option to pay for purchases using BNPL. BNPL providers pay merchants on behalf of consumers when goods or services are purchased. These payments are later repaid by consumers over time in equal instalments. BNPL providers take a cut from the purchase price of the goods or services sold. When consumers fall behind on payments, late fees are typically charged by BNPL providers, and persistently delinquent accounts may be sold to debt collection agencies. BNPL providers in Hong Kong include banks (traditional or virtual banks which provide BNPL services) and licensed money lenders (non-bank fintech firms with licences to provide BNPL services).
27. The Group will expand the Business to provide BNPL with the new platform “PayKool” (“**PayKool**”) to retail customers. Further, with a view to pursue BNPL, the Subsidiaries have entered into the following arrangements and/or documents with individual third parties during the Relevant Period:-
- (1) KC has signed up for a Visa Digital Enablement Program Enrolment Form (“**Visa Enrolment Form**”) with Visa Worldwide Pte. Limited (“**Visa**”) and will cooperate with Visa to integrate the payment gateway for a wide range of merchants which can utilize BNPL service. In connection thereto, KC also entered into an Issuer

Participation Agreement with Visa on 30 March 2023. However, such agreement would not be effective within the Relevant Period;⁵

- (2) KC has entered into a Master Supply Agreement (Cards and Services) (“**Cards Supply Agreement**”) with Idemia Hong Kong Limited (“**Idemia**”) effective on 15 May 2023 for the ordering and manufacturing of Visa cards and provision of related services;
- (3) KC entered into a Software As a Service (SAAS) Agreement (“**SAAS Agreement**”) with BPC Banking Technologies (Asia Pacific) Pte. Ltd (“**BPC**”) on 9 March 2023 for use of BPC’s “SmartVista Software” in SAAS mode.

(d) Intermediaries

28. In carrying out the Business, the Subsidiaries have appointed about 125 referral agents and 26 referral partners as their financial intermediaries (“**Intermediaries**”), who would refer people in need of borrowing money to the Subsidiaries so as to enable the granting of loans.⁶
29. As confirmed by the Group, none of the Intermediaries appointed have any interaction with the officials of the Hong Kong government during the Relevant Period.

(e) Debt Collecting

30. The Subsidiaries do not carry out debt collection by themselves before taking out legal action for enforcement of defaulted loans. During the Relevant Period, the Subsidiaries have entered into service agreements (“**Debt Collection Agreements**”) with Modern Creative (HK) Limited (“**Debt Collecting Agent**”) for the provision of sole and exclusive debt collection service (“**Debt Collection Service**”).
31. Under the laws applicable during the Relevant Period, whilst a person carrying on money lending business in Hong Kong is permitted to engage debt collecting agents for the

⁵ The Issuer Participation Agreement would be effective from 15 September 2023 to 31 August 2026 (both dates inclusive).

⁶ According to the Group, the income sourced through the Intermediaries contributed to around 0.4% of the total profits for the financial years 2020 and 2021.

purpose of enforcing and collecting debt due under loan agreements, the debt collection process must be lawful and not in contravention of the conditions specified under the ML Licence. Parties who engage in debt collections which are unlawful or against the conditions of the ML Licence may be subject to criminal liability under the Money Lenders Ordinance (Cap.163) (as “MLO” hereinbelow). In particular:

- (1) Money lenders who carry on business not in accordance with the conditions of the ML Licence commit an offence under section 29(1) of MLO and are punishable at a maximum fine of HK\$100,000 and imprisonment for 2 years;
 - (2) Any director, manager or officer managing the money lending company may also commit an offence under section 31 of MLO if the money lender carries on the business not in accordance with the conditions of the ML Licence with his consent or connivance or due to his neglect, and the relevant director, manager or officer will be punishable to a maximum fine of HK\$10,000 and imprisonment for 6 months;
 - (3) Depending on the nature of the illegal debt collecting activity, the person collecting debt (or parties who aid and abet such act) may also be liable to offences such as blackmailing, criminal intimidation, common assault or other violence-related offence under the Crimes Ordinance (Cap.200) etc.
32. Further, money lenders who engage in unlawful debt collecting activity are also liable to have the ML Licence revoked or suspended by the authority. In those circumstances, whether the ML Licence will be revoked or suspended (and in the later case the duration of suspension) depends on the severity of the contravention.
33. The Debt Collection Service provided by the Debt Collecting Agent is subject to the Debt Collectors Policy issued by the Subsidiaries from time to time. Insofar as the actual conduct of the Debt Collection Service complies with the Debt Collection Agreements and Debt Collectors Policy, I am of the view that it should be in compliance with the laws and regulations in Hong Kong.

(f) **Branch & Office Premises**

34. During the Relevant Period, the Subsidiaries have entered into leases in respect of the following properties for the purpose of carrying out the Business:-

	<u>Address</u>	<u>Leased by</u>	<u>Used by</u>	<u>Purpose</u>	<u>Lease expiry date</u>
(1)	Shop No.8, G/F, Hoi Fung Centre, 2 Po Man Street, Shau Kei Wan, Hong Kong (“ Shau Kei Wan Shop ”)	KC	KC	Branch	10 May 2025
(2)	Unit A008, 1/F, Nan Fung Centre, 264-298 Castle Peak Road, 64-98 Sai Lau Kwok Road, Tsuen Wan, the New Territories (“ Tsuen Wan Shop ”)	Hong Yip Well Being Limited	KC	Branch	14 June 2024
(3)	Shop ETS 7, East Tsim Sha Tsui Station, Kowloon (“ Tsim Sha Tsui Shop ”)	KC	KC	Branch	9 February 2024
(4)	Shop 1A8, G/F, Whampoa Estate, 99-109 Dock Street, Kowloon (“ Whampoa Shop ”)	KC	KC	Branch	21 July 2024
(5)	Shop No. SHT 21, Sha Tin Station, the New Territories (“ Shatin Shop ”)	KC	KC	Branch	3 January 2024
(6)	Shop A & Part of Shop B, G/F, Shun Fat House, Nos. 54-66 Kau Yuk Road, Yuen Long, the New Territories (“ Yuen Long Shop ”)	KC-Ex	KC & KC-Ex	Branch	30 September 2024
(7)	Shop 6C, G/F, Kwong Fuk Building, 114/124 Kwong Fuk Road, 31B/31C, 33A/33B & 39/41 Kwong Fuk Square, Tai Po, the New Territories (“ Tai Po Shop ”)	KC-Ex	KC-Ex	Branch	3 February 2021
		KC	KC & KC-Ex	Branch	3 August 2024

(8)	17/F, Wheelock House, 20 Pedder Street, Central, Hong Kong (“ Central 17/F Office ”)	KC-Ex ⁷	KC-Ex	Office	14 June 2024
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35. Further, the Subsidiaries also leased the following properties during the Relevant Period although they have been occupied by the companies below for the purpose of carrying out secured loan business:-

	<u>Address</u>	<u>Leased by</u>	<u>Used by</u>	<u>Purpose</u>	<u>Lease expiry date</u>
(1)	Flat A, G/F, Kau On Building, 253 Cheung Sha Wan Road, Sham Shui Po, Kowloon (“ Sham Shui Po Shop ”)	KC	KC	Branch	14 April 2022
(2)	4/F, Wheelock House, 20 Pedder Street, Central, Hong Kong (“ Central 4/F Office ”)	KC-Ex	KC & KC-Ex	Principal Place of Business	14 June 2024

(g) Employees

36. During the Relevant Period, the Subsidiaries have employed 77 employees, all of which are based in Hong Kong.

(h) Acquisition of Unsecured Loan Business

37. The Subsidiaries acquired the unsecured loan business from the operating subsidiaries of Konew Group Limited⁸ (“**Excluded Group**”). In particular, the unsecured loan business was acquired pursuant to the following documents:-

- (1) An assignment of loan dated 31 December 2022 entered into between Maxcolm Finance Limited (“**MFL**”) and KC-Ex, whereby MFL assigned all its unsecured

⁷ Upon assignment of a tenancy agreement dated 6 January 2021 by MoneySQ Limited (“**MoneySQ**”) with effect from 1 April 2023.

⁸ A company incorporated under the laws of the BVI on 28 November 2019.

loan business to KC-Ex at the consideration of HK\$141,462,449.29 (“**MFL’s Assignment of Loan**”);

(2) An assignment of loan dated 31 December 2022 entered into between KCIL and KC-Ex, whereby KCIL assigned all its unsecured loan business to KC-Ex at the consideration of HK\$8,671,054.51 (“**KCIL’s Assignment of Loan**”);

(3) A transfer of mortgage dated 31 December 2022 entered into between KC-Ex and KCIL, whereby KC-Ex assigned all its mortgage loan business to KCIL at the consideration of HK\$1,418,367.95 (“**KC-Ex’s Transfer of Mortgage**”).

38. In the above instruments, (a) both MFL and KCIL assigned the unsecured loan business as beneficial owners; (b) KC-Ex transferred the secured loan business as beneficial owner; (c) both MFL, KCIL and KC-Ex assigned/transferred their entire unsecured/secured loan businesses without reserving any residual rights and/or interest; (d) all the assignments and transfer were supported by good and sufficient considerations; and (e) the assignment of loan and transfer of mortgage are transactions in the ordinary course of business. The said transfer is legal, valid and enforceable, and is also in compliance with the requirements under the laws and regulations in Hong Kong, including the PD(P)O (see below), as all of the agreements stipulate that the Subsidiaries are allowed to assign their rights, interests and/or titles thereunder without giving notice or obtaining the prior consent of the borrower.

39. Regarding whether any pre-approval or consent from the parties (and/or their directors) to the MFL’s and KCIL’s Assignments of Loan and KC-Ex’s Transfer of Mortgage (“**Documents of Transfer**”) is required before their signing:-

(1) The absence of resolution from KC-Ex approving the signing of the Documents of Transfer *per se* will not render them invalid and unenforceable: Royal British Bank v Turquand (1856) 6 E&B 327; Morris v Kanssen [1946] 1 All ER 586.

- (2) I have perused documents including the MFL's and KCIL's Assignments of Loan and the Articles of Association of KC-Ex. In my view, no prior consent of MFL/KCIL and KC-Ex is required to acknowledge receipt of the assignment of loan.

(i) Subordinated Mortgage Loan

40. During the Relevant Period, the Subsidiaries have not engaged in the provision of new subordinated mortgage loans ("**Subordinated Mortgage**").⁹ In the premises, it is unnecessary for me to opine on whether any issue of compliance will arise by reason of the provision of Subordinated Mortgage.
41. For Subordinated Mortgages already created before the Relevant Period, it is relatively unlikely that any issue of non-compliance would arise from the manner they were created during the Relevant Period simply because loans under the Subordinated Mortgage were roll-over to the Relevant Period. In any event, the Group confirmed that the Subordinated Mortgage only accounted for a minor portion of the Business and the Subsidiaries' profits, and non-compliance (if there was any) arising from the Subordinated Mortgage should be immaterial.

ADVICE SOUGHT

42. Paragraphs 1 to 14 of the section 'Matters' under the Instructions have set out the scope of issues which I need to address in my Legal Opinion. In relation to those issues, my opinion shall be given in Sections (1) to (14) hereinbelow.
43. In relation to my views expressed herein as to various compliance issues during the Relevant Period, they are based on facts as found from the information and/or documents provided by the Subsidiaries.

⁹ Loans which were offered to individuals and corporate property owner borrowers, and secured by mortgages which were subordinate to the first or higher-ranking mortgages charged on the properties concerned.

(1) Approvals, Licences & Legal Compliance

◆ Business Registration

44. Under the Business Registration Ordinance (Cap.310) (“**BRO**”), every person carrying on or commencing to carry on any business shall apply for a business registration in the manner prescribed in section 5 of the BRO.
45. I have been provided with the business registration documents of the Subsidiaries during the Relevant Period. In the premises, I am satisfied that the certificates of business registration of the Subsidiaries are valid, in full force and effect and is renewable in the ordinary course of business.

◆ Money Lenders Licence

46. Under the Money Lenders Ordinance (Cap.163) (“**MLO**”), a person carrying on business as a money lender must obtain a licence granted under section 11 of MLO or renewed under section 13 of MLO (“**ML Licence**”).
47. With the exception of certain loans advanced to their employees,¹⁰ the Business carried out by the Subsidiaries are money lending business within the meaning of MLO, to which ML Licences are required.
48. During the Relevant Period, the Subsidiaries have been operating the Business under the KC’s Licence and KC-Ex’s Licence. These ML Licences were valid and in full force and effect during the Relevant Period. There is no evidence that the Subsidiaries have had any material breach of the conditions under the ML Licences (analysis as detailed below) nor any foreseeable ground for the Commissioner of Police (“**CoP**”) or other regulatory authorities to object to their renewal. In my opinion, the current ML Licences are renewable in the normal course of business. Any ML Licence in respect of which an application for renewal is made shall be deemed to be in force until the determination of such application, unless such application is withdrawn, or the ML Licence is revoked or suspended.

¹⁰ Which fall within the exception under Part 2 of Schedule 1 to MLO.

49. The Group has also provided me with ML Licences for operation of the Business during the Relevant Period. In my opinion, those ML Licences are valid and in full force and effect.

◆ **Shop Premises**

50. Having perused the ML Licences of the Subsidiaries, I am satisfied that Business is and was carried out in the following premises (“**Shop Premises**”) in accordance with the ML Licences:-

- (1) Shau Kei Wan Shop;
- (2) Tsuen Wan Shop;
- (3) Tsim Sha Tsui Shop;
- (4) Whampoa Shop;
- (5) Shatin Shop;
- (6) Yuen Long Shop;
- (7) Tai Po Shop;
- (8) Central 17/F Office.

51. In 2022 and 2023, the Subsidiaries have acquired fire and general public liability insurance for, inter alia: (a) Tai Po Shop; (b) Yuen Long Shop; (c) Shau Kei Wan Shop; (d) Whampoa Shop; (e) Tsim Sha Tsui Shop; (f) Tsuen Wan Shop; (g) Shatin Shop; (h) Central 17/F Office.

◆ **Electronic Transactions**

52. The ‘7 x 24 AI loan’ is a fully-automated loan service provided by the Subsidiaries in many of their branches. The service is provided through webcams set up in the branches connecting to the offices. The transaction is conducted in a fully electronic setting.

53. Under the Electronic Transactions Ordinance (Cap.553) (“**ETO**”), electronic records and digital signatures used in electronic transactions are given the same legal status as their paper-based counterparts by the promotion of certification authorities. Hence, digital

signatures can satisfy the legal requirements for signatures (if specified requirements are complied with), and loan agreements executed in electronic form would be valid and have the same legal status as if they were executed on papers, and the loan agreements so executed may be retained in the form of electronic records.

54. Further, it is a criminal offence under ETO for any person who has access to record or other material in the course of performing a function under or for the purpose of the ordinance to disclose information relating to another person as contained in such record or material to any other person.

◆ **Electronic Messages**

55. The Unsolicited Electronic Messages Ordinance (Cap.593) (“**UEMO**”) regulates the sending of unsolicited commercial electronic messages with a ‘Hong Kong link’. Under UEMO, ‘do-not-call registers’ (“**DNC Register**”) were established for pre-recorded telephone messages, short messages and facsimile messages, and senders of commercial electronic messages should access the registers to update and purge their database of address and should not send messages to those numbers.

56. UEMO also prescribes the requirements on contents of commercial electronic messages which the senders should observe, including: (a) accuracy, language, presentation of identity and contact information of senders; and (b) provision, language, and presentation of unsubscribe facility. Sender must keep a record of the un-subscription requests received for at least 3 years and should not use misleading subject headings or conceal calling line identification information in the electronic messages.

57. Some common regulatory regimes under UEMO include the followings:-

- (1) Under section 8 of UEMO, a commercial electronic message sent with a Hong Kong link must include: (a) clear and accurate information identifying the individual or organization who authorized the sending of the message;¹¹ (b) clear

¹¹ Such information includes the name, address, telephone number in both English and Chinese and (if sent by email) the electronic mail address: regulations 5 and 6, Unsolicited Electronic Messages Regulations (Cap.593A) (“**UEMR**”).

and accurate information about how the recipient can contact that individual or organization; (c) such information and complies with such conditions as is or are specified in the regulations; and (d) information reasonably likely to be valid for at least 30 days after the message is sent;

- (2) Under section 9 of UEMO: (a) a commercial electronic message sent with a Hong Kong link must include a statement to the effect that the recipient may use an electronic address or other electronic means specified in the message to send an unsubscribe request to the individual or organization who authorized the sending of the message (“**unsubscribe facility**”) or a statement to similar effect;¹² (b) if the unsubscribe facility is a telephone number or facsimile number, it is a number allocated or assigned by the Communications Authority; (c) the unsubscribe facility is reasonably likely to be capable of receiving the recipient’s unsubscribe request at all times during a period of at least 30 days after the message is sent; and (d) the unsubscribe request may be sent by the recipient free of charge for the use of the unsubscribe facility;
- (3) Under section 10 of UEMO, after unsubscribe request is sent using the unsubscribe facility, the individual or organization shall, within 10 working days from the day on which the unsubscribe request is sent: (a) cease sending any further commercial electronic messages to the electronic address in respect of which the unsubscribe request is sent; and (b) cease authorizing the sending of any further commercial electronic messages to that electronic address;
- (4) Under section 11 of UEMO, a person shall not send commercial electronic message with a Hong Kong link to an electronic address that has been listed in DNC Register for 10 working days or more;
- (5) Under section 13 of UEMO, a person who sends a commercial electronic message with a Hong Kong link from an electronic address (whether a telephone number or facsimile number) shall not: (a) conceal or withhold from the called party the calling line identification information of the sending number; or (b) perform any

¹² The statement must, in general, be given in both English and Chinese: regulation 7(1), UEMR.

operation or issue any instruction in connection with the sending of the message for the purpose of, or with effect of, concealing or withholding from the called party the calling line identification information of the sending number.

58. I have been provided with commercial electronic messages issued by the Subsidiaries during the Relevant Period, and in my opinion they are in compliance with the regulatory framework under UEMO.
59. By the letters from the Office of the Communications Authority (“OFCA”) dated 1 December 2022, 21 February 2023 and 25 July 2023, the Subsidiaries were informed of the followings:-
- (1) OFCA had on 9 November 2018 and 7 December 2018 issued two letters to KC relating to a reported case against it on suspected contraventions of sections 8 and 11 of UEMO (case reference no. 185004628). The said case, however, had been closed;
 - (2) OFCA had in 2012, 2014, 2019 and 2022 issued 4 letters to KC-Ex relating to 4 distinct reported cases against it on suspected contraventions of sections 8, 9, 10 and/or 11 of UEMO (case reference nos. 125005890, 1450006008, 185004904 and 225000344). As confirmed by OFCA in the letter of 21 February 2023 and 25 July 2023, all the 4 cases had been closed.
60. Under section 38 of UEMO, where OFCA is of the opinion that there is contravention of the above provisions (Part 2 provisions), then OFCA may serve a notice in writing on the person contravening and, inter alia, directing the person to take specified steps to remedy the contravention or the matters occasioning the service of the notice within a specified period (“**Enforcement Notice**”). The steps specified in the Enforcement Notice may be framed so as to afford that person a choice between different ways of remedying the contravention or matter. Under section 39 of UEMO, a person who contravenes an Enforcement Notice commits an offence and is liable to: (a) on first conviction, to a fine at (level 6); (b) on second or subsequent conviction, to a fine of HK\$500,000 and in case of continuing offence, to a further daily fine of HK\$1,000.

61. In respect of all the above cases (of which investigations have already been closed by OFCA), it is unlikely that OFCA would take enforcement actions against the Subsidiaries. In my view, any contraventions of UEMO under these cases are non-material and non-systemic. Other than the cases referred to by OFCA above, from the documents provided to me, I am not aware of any commercial electronic messages which are or could have been in breach of the provisions of UEMO.

(2) Outstanding Approvals

62. The Subsidiaries have obtained all necessary licences for the operation of the Business during the Relevant Period. In my view, there is no outstanding approval which the Subsidiaries need to obtain during the Relevant Period.

(3) Material Contracts

63. During the Relevant Period, the Subsidiaries have entered into the following material contracts which are not in their ordinary course of business, or contain restrictive covenants, or usual, non-routine or unduly onerous terms:-

- (1) Tenancy agreements in respect of Tsuen Wan Shop, Shau Kei Wan Shop, Whampoa Shop, Tai Po Shop, Yuen Long Shop and Central 17/F Office for operation of the Business (“**Shops Leases**”);
- (2) Tenancy agreement in respect of Flat A, 2/F, Hollywood Heights, No.6 Old Peak Road for providing residence to the Subsidiaries’ directors (“**Mid-level Lease**”);
- (3) Licence agreements in respect of Tsim Sha Tsui Shop and Shatin Shop for operation of the Business (“**Shop Licences**”);
- (4) Service agreement with Modern Creative (HK) Limited for provision of debt collecting service to the Subsidiaries (“**Debt Collection Agreement**”);
- (5) Appointment agreements with: (a) Centaline Mortgage Broker Ltd; (b) MReferral Corporation (HK) Ltd; (c) Rich Mass Consulting (Hong Kong) Ltd; (d) Royal Capital; and (e) Vast Management Group Ltd for appointment as the financial intermediaries of the Subsidiaries (“**Appointment Agreements**”);

- (6) Loan agreements with the Subsidiaries' employees for provision of non-interest bearing loans to the Subsidiaries' employees¹³ ("**Employees Loan Agreements**");
- (7) Samples and templates of loan agreements (including loan agreements for Personal Loan, Property Owner Loan and SME Loan, as well as the Terms and Conditions and notes and memorandums required by MLO (see below) provided by for my review) ("**Sample Loan Agreements**");
- (8) Facility letters for provision of tax loans: (a) between KC and Bank of East Asia Limited ("**BEA**") dated 13 January 2020, 29 January 2021 and 15 November 2021; and (b) between KC-Ex and BEA dated 13 January 2020, 25 November 2020 and 15 November 2021;
- (9) A banking facility letter issued by DBS Bank (Hong Kong) Limited ("**DBS**") in favour of KC-Ex on 21 December 2015 ("**DBS Facility Letter**");¹⁴
- (10) Collaboration Agreement;
- (11) Visa Enrolment Form, Card Supply Agreement and SAAS Agreement in respect of the BNPL products;
- (12) The Draft Master Deed and D/T in respect of the LP Scheme;
- (13) MFL/KCIL's Assignments of Loan and KC-Ex's Transfer of Mortgage in respect of the acquisition of the Business for unsecured loan;
- (14) The Draft Reorganization Agreements between: (a) Konew Fintech Corporation Limited ("**KFCL**") and the Listing Entity in relation to the sale and purchase of the 100% interest in KC-BVI, and (b) Konew Credit and KC-Ex BVI in relation to the sale and purchase of the 100% interest in KC-Ex (in its former name Konew Financial Express Limited) ("**Reorganization Agreements**");
- (15) Sample loan agreement disclosed, including: (a) Deed of Confirmation to Second Supplemental Loan Agreement dated 9 August 2022 between KC and Excel Precise International Limited ("**Excel Precise**"); (b) Deed of Confirmation to Second Supplemental Loan Agreement dated 9 August 2022 between KC-Ex and Excel Precise; (c) Credit Agreement dated 30 June 2020.

¹³ Interest however will be levied if the relevant employee ceases employment with the Subsidiaries within 5 years after the entering of the agreement.

¹⁴ The DBS Facility Letter was issued before the Relevant Period, but DBS continued to provide revolving loan to KC-Ex pursuant to the said letter during the Relevant Period.

64. In my opinion, subject to my observations below, all of the above material contracts, agreements, deeds and/or licences are binding, legal and enforceable:-

- (1) The tenancy agreement of Shau Kei Wan Shop and the Mid-level Lease are not stamped. For the reason detailed below, the lack of stamping shall not affect the validity and lawfulness of these tenancy agreements, although they may not be received as evidence in civil proceedings;
- (2) For reasons detailed below, the Shop Licences are not instruments which attract stamp duty and do not require stamping. The lack of stamping would not affect the validity and enforceability of these agreements;
- (3) For the reasons detailed below, the Debt Collection Agreement and Appointment Agreements are lawful and in compliance with the law applicable in Hong Kong. They shall not be void for illegality and is legally enforceable in Hong Kong;
- (4) The Employees Loan Agreements are not governed by the MLO as they fall within the exception under Part 2 of Schedule 1 to the MLO;
- (5) The DBS Facility Letter itself is not a binding agreement. Under Part D, provision or continuation of banking facilities from DBS is subject to the supply of various types of documents by KC-Ex. In this regard, the Subsidiaries have confirmed that those documents have all been duly supplied to, and receipts were acknowledged by, DBS;
- (6) Parties to the following agreements have expressly submitted to the jurisdictions of other foreign courts/forums and other government laws other than Hong Kong law. It will be beyond my expertise as Hong Kong law expert if the legal effect of the Visa Enrolment Form is to be interpreted in accordance with its governing law. More specifically:-
 - (a) Parties to Visa Enrolment Form have submitted to the jurisdiction of the Singapore International Arbitration Centre and the laws of the State of New York as the governing law;
 - (b) Parties to SAAS Agreement have submitted to the jurisdiction of the Singapore courts and the laws of Singapore;
- (7) The note and memorandum attached to Sample Loan Agreements (including that attached to loan agreement for PayKool service) contains reference to maximum

lawful effective interest rate (60% per annum) and extortionate interest rate (48% per annum) under previous version of MLO. These rates are no longer the law for loan agreements entered into after 30 December 2022 and require to be updated (see below).

(4) Statutory Compliances

65. Pursuant to paragraph 4 of the Instructions, I have set out my views in relation to the Subsidiaries' compliance of the legislations, regulations and/or guidelines as follows.

(1) Money Lenders Ordinance (Cap.163) (i.e. "MLO")

Licensing Regime

66. Under the MLO, a person carrying on the business of a money lender in Hong Kong must obtain a ML Licence and carry out the business at such place ("**Licensing Place**") and in accordance with such conditions ("**Licensing Conditions**") as specified in the ML Licence. Any person who carries on business as a money lender without a valid ML Licence, not at a Licensing Place or not in accordance with the Licensing Conditions commits an offence¹⁵ and is liable to a fine at HK\$100,000 and imprisonment for 2 years.¹⁶ Furthermore, a money lender will not be entitled to recover any loan lent by him (or any interest thereof) in any civil proceedings without production of a valid ML Licence, unless the Court is satisfied that it would be inequitable to deny him the said relief.

67. The licensing court may revoke or suspend the ML Licence if: (a) the licensee has ceased to be a fit and proper person to carry on the business; (b) the Licensing Place has ceased to be suitable for carrying on the business; (c) the licensee has been in serious breach of, or has ceased to satisfy, the Licensing Conditions; or (d) the business has been carried on in a manner contrary to public interest.

Lending Interest

¹⁵ Section 29, MLO.

¹⁶ Section 32, MLO.

68. Currently, section 24(1) of MLO provides that any person who lends or offers to lend money at an effective rate of interest exceeding 48% per annum commits an offence; section 25(3) of MLO further stipulates that any loan in respect of which the effective rate of interest exceeds 36% per annum shall be presumed to be extortionate, unless the Court is satisfied that such rate is not unreasonable or unfair having regard to all the circumstances.
69. The statutory limit of effective interest rate (48%) and threshold of extortionate rate (36%) were promoted in about April 2021, when the Financial Services and the Treasury Bureau (“FSTB”) came to the view that the statutory limit of effective rate of interest shall be lowered from 60% per annum to 48% per annum, and the effective rate of interest exceeding which a loan transaction would be considered extortionate would be lowered from 48% per annum to 36% per annum. The relevant amendments came into effect on 30 December 2022 (“Effective Date”).
70. I have reviewed the loan information provided by the Subsidiaries. In summary, it is my view that:-
- (1) For the loans advanced by the Subsidiaries during the Relevant Period (i.e. before 30 December 2022), they are all in compliance with the regulatory regime under MLO, in particular, the effective interest rate does not exceed the previous effective interest rate of 60% per annum.
 - (2) The current effective interest rate (48% per annum) and threshold of extortionate rate (36% per annum) do not apply to loan agreement entered into before the Effective Date. Hence, for loan agreements entered into between the Subsidiaries and the borrower(s) before the Effective Date with effective interest rate above 36% per annum but below 48% per annum, they will not be presumed to be extortionate under the new regime.
71. According to the Subsidiaries, certain loans granted on or after 30 December 2022 bear an interest rate of over 36% per annum (although none of them exceeded 48% per annum). In these circumstances:-

- (1) The money lender will not commit a criminal offence under the MLO, and the transaction shall not become illegal and unenforceable. The implication is rather on the money lender's civil remedy in recovering the loan;
- (2) Under section 25(3) of MLO, such agreement will be presumed to be extortionate. However, this is only a rebuttable presumption, and the Court may declare that the agreement is not extortionate if, having regard to all the circumstances relating to it, satisfied that such rate is not unreasonable or unfair. See, for example: *Cheung Bing Sum v Leo Lee* [1996] 4 HKC 130 & [1997] HKLRD 138;
- (3) Under section 25(2) of MLO, the Court will also consider a transaction to be extortionate if: (a) it requires the debtor or a relative of his to make payments (whether unconditionally or on certain contingencies) which are grossly exorbitant; and (b) it otherwise grossly contravenes ordinary principles of fair-dealing;
- (4) Where the Court is satisfied that a transaction is extortionate, it may, in proceedings for recovery of money lent or enforcement of any loan agreement, re-open the transaction so as to do justice between the parties and, for that purpose, make such orders/directions in respect of the terms of the transaction or rights of parties thereunder as the Court thinks fit under section 25(1) of MLO. However, in most situations (e.g. where the transaction is conducted at arms' length) the Court would only lower the interest rate chargeable and would not declare the transaction void. In the circumstances, the lenders would still be able to recover the principal and certain part of the interest of the loan. Whilst in principle the Court can order the borrower to repay the principal sum to the lender without interest, such direction should be relatively rare unless the transaction is highly unfair to the borrower and the lender's conduct is of a type which is the most unbecoming which merits the total deprivation of interest, since it should be within the Court's consideration that in commercial world a lender is always allowed to charge reasonable interest for a loan made;

- (5) However, the extension of relief does not become activated merely because there is an oppressive rate of interest charged, instead “what must be shown is that there is unconscionable pressure on the mortgagor to enter into the arrangement” or unusual feature in the transaction (e.g. duress, oppression, etc). See: *Eyre v Hughes* (1876) 2 Ch D 148 at 163; *Takemura v National Australia Bank Ltd* [2003] NSWSC 339, paragraph 24. In this regard, there would be less likelihood of unconscionable pressure where the borrower is a businessman or a commercial entity taking a business decision in borrowing the money, since “a man of great intelligence ... carrying on a high class business, simply finding that his business is so speculative that he cannot get finance from the banks, but it is so profitable in his skillful hands that he can make profits which can pay 60 or 80 per cent interest”: *Reading Trust Ltd v Spero* [1930] 1 KB 492 & [1929] All ER Rep 405. In *Spero* case, the defendant was a man of 40 years of age carrying on the business of collectible items dealer. His business was speculative, and required him to hold on to jewelry until the price was right, and he commenced his business without any capital or security. Since the defendant had to borrow, and as he had little security, he had to borrow from money lenders, including the plaintiff at the rates ranging from 80-96%. The English Court of Appeal formed the view that there was no suggestion of anyone putting pressure on the defendant to borrow at such rates, and that the defendant made a business decision to do so, he could not show that the transaction was unconscionable so that it should be set aside. In my view, if the objective circumstances are that the borrower entered into the loan agreement on his own volition and under no apparent unconscionable pressure (e.g. where the lender does not exert any oppression and is not aware of any undue influence being exerted on the borrower by third party or any circumstances which may apparently render the transaction unfair), it will be unlikely for the Court to consider such agreement as extortionate even if the rate of interest charged is oppressively high;
- (6) It is also worth noting that where a money lender invariably charges interest at an extortionate rate, it is open to the Licensing Court to conclude that the money lender is charging excessive rates of interest. Nonetheless, in the present case, there is no evidence that the Subsidiaries would always charge interests above the threshold of extortionate rate (or even above the legal effective interest rate) during and after

the Relevant Period. In fact, among the sample loan agreements provided to me, the Subsidiaries were invariably charging interests at the range of 24% - 46.8% per annum for loans provided during the Relevant Period below the threshold of extortionate interest rate applicable. For this reason, I am of the view that the continuity of the Subsidiaries' ML Licences shall not be affected by interest rate charged on the loans during the Relevant Period.

72. Whilst every case depends on its own circumstances, it can be deduced from the matters referred to above that if the following measures are taken and fully complied with in the operation of the Business, it should be less likely for the Court to consider an agreement for loan to be extortionate:-

- (1) Imposition of stringent protocol on due diligence of the borrowers to ensure that they entered into the loan agreements on their own volition and under no apparent unconscionable pressure and to eliminate undue influence being exerted on the borrower by third party or circumstances which may render the transaction unfair;
- (2) Imposition of stringent protocol and constant review on staff training to ensure that no oppression will be, or is likely to be so apprehended by the customers, exerted on the customers in borrowing the loans; and
- (3) Keeping sufficient record of the circumstances leading to the borrowing of the loan to show that the transaction is not unconscionable.

73. As confirmed by the Group, the following additional measures have been taken by the Subsidiaries during the Relevant Period in respect of loans which carried high interest rates:-

- (1) The Subsidiaries have updated their compliance assurance framework and provided internal training for their employees to remind them that when they were handling loans with an interest rate exceeding the presumed extortionate rate, extra attention should be paid to ensure that their borrowers were sophisticated enough

to understand the terms and conditions of the loan, and they were in a proper mental condition when the loan agreements were executed;

- (2) The Subsidiaries have kept complete audio and/or video records showing that their employees explained the terms and conditions of the loans to the borrowers; and would make sure that the audio recordings were played to the borrowers informing them of the terms and conditions of the loans; and
- (3) Before taking out and renewing loans which exceeded the presumed extortionate rate, the borrowers were additionally required to declare that they understood that they were charged an interest rate exceeding the presumed extortionate rate based on assessment of their risk profile and they had entered into the transactions out of their own volition after understanding the terms and conditions.

74. In my view, the above additional measures would effectively lower the chance for the Court to consider the relevant loan agreements to be extortionate, since the borrowers are well informed of the fact that they would have to pay an interest rate above the presumed extortionate rate for the loan incurred with reference to the credit profile, and that there would be sufficient basis for the Subsidiaries to be satisfied that the borrower is mentally capable of understanding the terms of the loan as a prerequisite requirement for approval of the loan. The additional measures would also facilitate the discharge of the Subsidiaries' evidential burden by providing unequivocal acknowledgment and record from the borrowers when dispute ensues, and accordingly the borrowers cannot assert challenge that they have not been properly informed of the terms. On the basis of my analysis above, it is my opinion that for loan agreements entered into by the Subsidiaries after 30 December 2022 with interest rates higher than 36% per annum but below 48% per annum, they should not be regarded as in non-compliance of the MLO for being illegal and/or unenforceable solely because the interest rates charged fall within the extortionate range. Further, if the relevant loan agreements were all entered into pursuant to the measures mentioned in paragraph 71 above, the chances that they would be regarded by the Court as extortionate should be low.

Business Plan

75. An applicant for ML Licence is required to submit a business plan with his application to show that he has comprehensive understanding of the money-lending business and is ready to carry on the business. In the business plan, the applicant is required to confirm that he is fully aware of and will comply with the provisions of MLO, the Licensing Conditions and the anti-money laundering and counter-financing of terrorism (“**AML/CFT**”) requirements for money lenders.¹⁷

Fit and Proper Persons

76. For the purpose of determining whether there are grounds to object against an application for the grant, renewal or transfer of ML Licence under MLO or the endorsement of new premises to a ML Licence, the Registrar of Money Lenders (“**ML Registrar**”) will assess whether the applicant and his related persons are fit and proper to carry on business as a money lender or to be associated with the business of money lending. In considering whether to make an application to the licensing court for revocation or suspension of a ML Licence, the ML Registrar will consider, inter alia, whether the licensee has ceased to be a fit and proper person to carry on such business. The “Guideline on Fit and Proper Criteria for Licensing of Money Lenders” issued by CR provides general guidance on matters that will be considered by the ML Registrar.
77. In assessing whether a person is fit and proper to carry on business as a money lender or to be associated with the business of money lending, the ML Registrar will take into account, insofar as they are applicable or relevant to the person concerned, the following factors:-¹⁸
- (1) Whether the person: (a) has any record of non-compliance with the provisions of the MLO (and its subsidiary legislation) or the Licensing Conditions; (b) is in compliance with guidelines promulgated for licensees, including (but not limited to) the Guidelines on Licensing Conditions of Money Lenders Licence and the Guideline on Compliance of AML/CFT Requirements for Licensed Money Lenders issued by CR; (c) has good records of compliance with the Companies

¹⁷ Guideline on Submission of Business Plan by Applicant of a Money Lenders Licence issued by the Companies Registry (“**CR**”)

¹⁸ Guideline on Fit and Proper Criteria for Licensing of Money Lenders issued by CR

Ordinance (Cap. 622) (i.e. referred to as 'CO' hereinbelow), e.g. the various filing obligations required by CO (where the person is a company incorporated under CO);

- (2) Whether the person: (a) has genuine intention and readiness to carry on business as money lender; (b) has established effective AML/CTF systems to ensure compliance with all AML/CTF requirements for money lenders; (c) has adequate and effective policies, procedures and controls in relation to recruitment, training and supervision of staff to ensure that persons who are employed by, or associated with, or act for the licensee are and remain fit and proper; (d) has provided the necessary infrastructure and internal control systems to manage risk effectively, avoid conflict of interest and provide proper audit trail; (e) has been untruthful or provided false or misleading information to ML Registrar or been uncooperative with ML Registrar in performance of a function under MLO;
- (3) Whether the person: (a) is under a financial position suitable for carrying on of the money lending business; (b) is in the course of being wound up or to whom a receiver has been appointed in respect of any property of the corporation;
- (4) Whether the person: (a) is equipped with skills, knowledge, experience and professionalism necessary to carry on the money lending business efficiently and effectively; (b) has the ability to carry out or manage the money lending business competently, honestly and fairly and in a manner which is not detrimental to the interest of the borrowers and the public; (c) is in any event indicating that he may be incompetent or negligent;
- (5) Whether the person (both being the applicant and its director): (a) has been found civilly liable for fraud, dishonesty, misfeasance or misconduct; (b) has been disqualified from being a director;
- (6) Whether the person: (a) has been refused or restricted from the right to carry on any trade, business or profession for which a specific licence, registration or other authorization is required; (b) has been reprimanded, censored, disciplined, publicly criticized or disqualified by any professional or regulatory body in relation to any trade, business or profession; (c) is the subject of an investigation and/or disciplinary action or proceeding.

78. For the reasons given below, I am not aware of any evidence that the Subsidiaries would not be considered a fit and proper person by the ML Registrar when they apply to renew the ML Licences upon the expiry of the KC Licence and KC-Ex Licence.

Licensing Conditions

79. Insofar as the Subsidiaries are concerned, the Licensing Conditions to which the KC's Licence and KC-Ex's Licence are subject to can be briefly summarized as follows:-

- (1) Enquiry duty – to enquire with the borrower, prior to making of any loan agreement, as to whether he had agreed with any third party for the procuring, negotiation, obtaining or application for loan, and not to grant loan if the reply is affirmative;
- (2) Explanation duty – to explain to the borrower, before making any loan agreement, terms of the loan agreement including: (a) interest rate (at % p.a.) and total amount of interest payable; (b) amount of repayment (periodically and in total); (c) possible consequences of default. The money lender must also keep video or audio record of the same being explained and obtain written consent by referee (if any referee is provided);
- (3) Charge duty – not to receive any charge or reward from the borrower in relation to the procuring, negotiation, obtaining or application of any loan;
- (4) Mortgage duty – not to accept subsidized housing as collateral to the loan unless it is satisfied that the restriction against alienation of the subsidized housing has been removed;
- (5) Information disclosure duty – to provide the requisite information, including that of appointed third party and the business, to CoP and ML Registrar if and when so requested;
- (6) Guideline compliance duty – to comply with the Guideline on Compliance of AML /CFT Requirements for Licensed Money Lenders;
- (7) Credit assessing duty – to assess borrower's credit when granting unsecured personal loan or significant increase of loan under agreement for unsecured personal loan;
- (8) Locality duty – (a) to designate a distinct office, physically separated from any other business and located at the premises specified on the licence, for conducting

money lending business; (b) all books and records of the Business must be kept on the premises specified in KC/KC-Ex's Licences;

- (9) Miscellaneous duty – to ensure that: (a) personal data is handled in conformity with the Personal Data (Privacy) Ordinance (Cap.486) (“PD(P)O”) and referee’s information provided by intending borrower is properly handled; (b) its advertisement is in compliance with the law and regulations;¹⁹ (c) debt collecting procedure is properly managed and controlled in a lawful and appropriate manner; (d) its employees and agents observe the Licensing Conditions and provisions in MLO by establishing proper system and procedure.

80. Moreover, KC/KC-Ex’s Licence also specified that the Business should be conducted, and should only be conducted, at the following Shop Premises:-

	<u>Shop Premises</u>	<u>Licensed Until</u>	<u>Licence Holder(s)</u>
(1)	Yuen Long Shop	22 August 2023	KC
		31 March 2024	KC-Ex
(2)	Tai Po Shop	22 August 2023	KC
		31 March 2024	KC-Ex
(3)	Shau Kei Wan Shop	22 August 2023	KC
(4)	Whampoa Shop	22 August 2023	KC
(5)	Tsim Sha Tsui Shop	22 August 2023	KC
(6)	Tsuen Wan Shop	22 August 2023	KC
(7)	Shatin Shop	22 August 2023	KC
(8)	Central 17/F Office	31 March 2024	KC-Ex

¹⁹ Including to: (a) put the words ‘放債人牌照號碼’ and ML Licence number in the Chinese version of the advertisement; (b) ensure that its advertisements are fair, reasonable and not misleading and (c) insert specific risk warning statement and avenue for complaint handling.

81. Having considered the documents and information provided by the Group, I am generally of the view that the Subsidiaries have exercised reasonable effort to comply with the Licensing Conditions under the ML Licences.
82. **First**, the Group has taken appropriate steps to ensure that the Subsidiaries' staff would duly discharge the duty to enquire and explain with the intending borrowers before the granting of the loan by the issuing of the following guidelines:-
- (1) Code of Conduct;²⁰
 - (2) Branch Development Department Handbook;
 - (3) Customer Exploration Department Handbook;
 - (4) Client Interactive Department Policies & Procedures;²¹
 - (5) PA Policies & Procedures;²²
83. With effect from 30 December 2022, the Subsidiaries' staff are also directed to give explanation to intending borrowers about the total amount of interest payable as well as the new statutory limit of effective interest rate and the new threshold of extortionate rate, before entering into any agreement for loan.
84. **Second**, the Group has duly ensured that: (a) no charge or reward would be received from the borrower in relation to the procuring, negotiation, obtaining or application of any loan and (b) no subsidized housing would be received as collateral to loan unless the restriction against alienation has been removed by issuing the "Referral Rebate Checking Flow" (第三方轉介報酬查核程序) which sets out the steps to be cleared (including that no charge or reward has been paid by the borrower) before rebate could be issued.

²⁰ Update to 31 December 2022

²¹ Update to 2 March 2020

²² Update to 19 October 2022. The Policies & Procedures encompass various matters including submission of loan enquiry orders and refinancing orders, loan application, signing of loan agreement, networking, agent rebate handling and exploration of business opportunities.

85. **Third**, the Group has taken appropriate steps to ensure compliance of the Guideline on AML/CFT requirements for licensed money lenders by issuing the following guidelines to the employees during the Relevant Period:-

- (1) Anti-Corruption and Compliance Guidelines;
- (2) Anti-Money Laundering and Counter-Terrorist Financing Policy;²³
- (3) Money Lender Ordinance Compliance Assurance Framework;²⁴
- (4) Call Center Manual (電話銷售組手冊);²⁵
- (5) Aas Manual (後勤同事手冊);²⁶
- (6) Customer Risk Assessment;²⁷
- (7) Suspicious Transaction Reporting;²⁸
- (8) Guideline on Transaction Monitoring;²⁹
- (9) AML Name Screening Guideline.³⁰

86. In addition, the Group has established a reporting channel and a whistle-blowing policy whereby any director, officer or employee can report suspected violations of policies and procedures on AMLCFT and suspicious transactions.³¹

87. The Group has also established a system to maintain the quality of the directors, officers, employees, affiliates and Intermediaries on AML/CFT laws and the relevant policies by offering commensurate training sessions to them on an annual basis,³² followed by a post-

²³ Update to 1 December 2022

²⁴ Update to 16 March 2021

²⁵ Update to 9 December 2020

²⁶ Update to 14 October 2019

²⁷ Update to 1 December 2022

²⁸ Update to 30 June 2022

²⁹ Update to 1 December 2022

³⁰ Date to 1 December 2022

³¹ See: Konew Fintech Corporation Ltd Suspicious Transaction Reporting (update to 30 June 2022) and Konew Fintech Corporation Ltd Whistleblowing Policy (update to 1 April 2020)

³² For example, the “Anti-Money Laundering and Counter-Terrorist Financing (“AML/CTF”) Staff Training” held in January 2022. The training covers: (a) statutory obligation of the Subsidiaries and staff, possible legal consequences for failure to report suspicious transactions under the relevant legislations; (b) policies and procedures relating to AML/CFT, including suspicious transactions identification and reporting, money laundering and terrorist financing risk assessment, customer due diligence, ongoing monitoring and customer screening; (c) new and emerging techniques on money laundering and terrorist financing; (d) red flags and suspicious activity indicators.

training test with a passing benchmark of 80%.³³ The objectives of those training sessions are to familiarize them with, inter alia, AML/CTF regulations and processes, their duties under the relevant legislations, the need to conduct customer due diligence, the procedure to identify and report suspicious activity and the AML support tools offered by the Subsidiaries.

88. The following department, personnel and committee have been established/appointed within the Group to ensure compliance of AML/CFT requirements during the Relevant Period:-

- (1) Compliance Department;
- (2) Compliance Officer;
- (3) Risk Control Department;
- (4) AML Committee.³⁴

89. On 27 July 2022, PricewaterhouseCoopers Limited (“PwC”) was engaged by KFCL to conduct a review relating to the design and operation of AML program in place (including review on samples of AML Committee minutes, customer risk assessments, customer due diligence profiles, name screening alerts, transaction monitoring alerts and staff training records) of, inter alia, the Subsidiaries for the period from 1 July 2021 to 30 June 2022 and a report entitled Anti-Money Laundering Framework Review was prepared by PwC on 30 November 2022. As a holistic comment, PwC observed that the management of the Subsidiaries has largely been able to provide evidence, both from policy, procedure and information sharing perspective, that efforts had been made to enhance the robustness of AML program with reference to AML/CTF risks inherent to money lending business, subject to a few issues including compliance culture, governance and policies. PwC did not identify any ‘high’ risk factor in the said report. The recommendations by PwC are

³³ See: “Test – AML/CTF Staff Training”. For newly employed staff, the training would have to be completed within 3 months after the date of employment.

³⁴ The AML Committee consists of senior management staff (chief executive officer and chief operating officer), money laundering reporting officer, compliance officer, representatives from compliance department and from risk control department. The Committee is authorized to, inter alia, seek information required from employees and any professional advisors, monitor whether the Group’s management has infringed any AML/CTF policies in performance of duties, review and make recommendations on the Group’s risk management and AML internal control procedures and obtain legal or other independent professional advice at the expenses of the Group as it considers necessary.

also more on perfecting the existing framework,³⁵ and response has been made by the Subsidiaries to follow up with those recommendations. In December 2022, a review of internal control was also performed by PwC on the Listing Entity and a draft report of Internal Control Review with recommendations was prepared in Mar 2023. Follow-up on the implementation will be performed between March and August 2023. In my opinion, the Subsidiaries have complied with the relevant laws and regulations in relation to each aspect of risk management.

90. Last but not least, under the contracts provided by the Group for the appointment of Intermediaries, terms have been provided whereby the Intermediaries warranted/covenanted to comply with all the laws and regulations in Hong Kong (including AML/CFT laws) in the conduct of the Business and the referral service;
91. **Fourth**, on the assessment of the intending borrowers' credits, the Subsidiaries have had the assistance of artificial intelligence ("AI") such as the IDCM, SME Dashboard and RPA during the Relevant Period. These AI technologies bring into vast array of parameters which, as a matter of principle, would ensure a more accurate assessment on the credits of the intending borrowers.
92. Further, the Group has issued the following guidelines to which the Subsidiaries' staff are required to observe when assessing the credits of intending borrowers:-
 - (1) Credit Policy of Personal Loan;³⁶
 - (2) Credit Policy of SME Loan;³⁷

³⁵ For example, increasing the frequency of AML meetings, document the requirement and methodology to conduct regular quality assurance, mechanism to continuously review and update customer risk assessment ("CRA") framework, extending customer due diligence ("CDD") measures to roader scenario, periodic review of existing records of customers (and notification to CDD makers of the review timeline), enhancing AML/CFT policy to specify certain CDD requirements in the guideline, reviewing ongoing batch screening in accordance with the name screening alert review requirements stipulated in guideline, stipulating requirement to perform screening against third party transaction counterparts before transaction in the policy, enhancing frequency of transaction monitoring alerts generation, including 'transfer to third parties' as one of the transaction monitoring scenarios in the typology coverage and scenario design in guideline, stipulating additional measures to be undertaken when monitoring higher-risk business relationships in AML/CFT policy and carrying out additional measures during transaction monitoring investigation and enhancing their record-keeping of CRA and CDD profiles and alert records by using a maker-checker approach.

³⁶ Update to March 2021

³⁷ Update to June 2022

- (3) Credit Policy of Unsecured Property Owner Loan;³⁸
- (4) Post Loan Out Default Monitoring Framework Unsecured Personal Loan;³⁹
- (5) Management Policies of Legal Department;
- (6) Customer Risk Assessment;⁴⁰
- (7) Institutional Risk Assessment Methodology;⁴¹

93. **Fifth**, to promote legal compliance with PD(P)O in handling personal data and referee's information provided by intending borrower, the Group has issued the "Management Policies of Legal Department" as an internal guideline of the legal department under which the department is expected to abide and pay attention to, inter alia, the provisions in PD(P)O. The department should also keep alert with the change and requirement in respect of what circumstances the staff who makes access to data would not infringe PD(P)O and EU General Data Protection Regulation. Further, whilst of peripheral relevance, the Group has also issued Information Security Policies to be abide by every staff of the Subsidiaries to protect the relevant data from unauthorized access, disclosure, modification and destruction.

94. **Sixth**, regarding the advertisements published and/or distributed by the Subsidiaries during the Relevant Period, I note that: (a) for the Chinese versions of the advertising materials, the words '放債人牌照號碼' and the corresponding ML Licence number have been clearly displayed; (b) there is nothing which is patently unfair, unreasonable and/or misleading in those advertising materials; and (c) specific risk warning statement (借錢梗要還，咪俾錢中介) and avenue for complaint handling (投訴熱線：3185 8847) are displayed in legible characters in the advertising materials. It is therefore my observation that they are in compliance with the law and regulations.⁴²

³⁸ Update to March 2022

³⁹ Update to 1 January 2022

⁴⁰ Update to 28 September 2022

⁴¹ Update to 30 June 2022

⁴² Including to: (a) put the words '放債人牌照號碼' and ML Licence number in the Chinese version of the advertisement; (b) ensure that its advertisements are fair, reasonable and not misleading and (c) insert specific risk warning statement and avenue for complaint handling.

95. **Seventh**, in order to ensure that the debt collecting procedure is properly managed and controlled in a lawful and appropriate manner:-

- (1) The Group has issued guideline such as the Konew Collection and Enforcement Policy to be observed by Debt Collecting Agent;
- (2) Under the Debt Collection Agreement, the Debt Collecting Agent is required to comply with, inter alia, all laws and regulations in Hong Kong including MLO and the Licensing Conditions, and not to resort to intimidation or violence, or employ harassment or improper debt collection tactics, against any person during provision of service, or try to recover debt from third parties including referees, family member or friends of the debtors;

96. **Lastly**, the Group has set up system, procedures and guidelines to ensure that the Subsidiaries' employees and agents observe the Licensing Conditions and provisions in MLO, including:-

- (1) Under the agreements to appoint the Intermediaries ("**Appointment Agreement**"), the Intermediaries are required, inter alia: (a) to observe and comply with all law in Hong Kong, including MLO and the Licensing Conditions, (b) not to conduct fraudulent inducement on borrowers or provide false, misleading or deceptive representation, and (c) act in compliance with MLO and use all reasonable efforts to keep accurate and systematic its own accounts and records regarding the borrowers;
- (2) The issuing of the "Management Policies of Legal Department" as an internal guideline to define the roles, responsibilities and accountabilities in respect of all positions in the legal department. Under the policies, the legal department is also expected to be highly aware of the Licensing Conditions and the provisions in MLO;
- (3) The Subsidiaries have also appointed a competent compliance officer to oversee the establishment and maintenance of AML/CTF system. The Group also confirms that, during the Relevant Period, there was no late submission of proforma for

collection of information by ML Registrar, nor failure to notify the ML Registrar of any change of particulars.

Business Practice

97. The enforceability of an agreement for repayment of money lent by a money lender is subject to the provisions of MLO, including: (a) the signing of a written memorandum by the borrower with the particulars prescribed; (b) the inclusion of a summary of the provisions of Part III and Part IV of MLO; (c) absence of compound interest and prohibition of repayment by instalments under the agreement; (d) absence of punitive interest by reason of default of repayment; (e) the effective interest rate not exceeding 48% per annum (since 30 December 2022).⁴³ MLO also imposes restrictions on recovery of charges or expenses relating to the granting of the loan and advertisements published by money lenders.
98. In the premises, a money lender should make a note or memorandum in writing of an agreement in compliance with section 18 of MLO and give a copy of such note or memorandum to the borrower and to include in or attach to it a summary in writing in compliance with section 18(1)(b) of MLO. Failure to comply with the above will also constitute a criminal offence under MLO.
99. In issuing or publishing advertisement, circular, business letter or other similar document, the money lender should also observe the regulations under section 26 of MLO (e.g. displaying the name of the money lender under the ML Licence, interest at rate per cent per annum and ML Licence number in a conspicuous part of the advertisement or document). Failure to do so constitute an offence under MLO.
100. It is a criminal offence under MLO for a money lender or its partner, employee, principal or agent to charge, recover or receive any costs or charges or remuneration or reward from a borrower in connection with any procuring, negotiating or obtaining of loan.

⁴³ Prior to 30 December 2022, the effective interest rate under MLO is 60% per annum.

101. Any person who commits an offence under MLO (other than under section 29) shall be liable to a fine at HK\$10,000 and to imprisonment for 6 months.⁴⁴ The Court may also order that the money lender be disqualified from holding a ML Licence for such period not exceeding 5 years.

Enquiries

102. The Subsidiaries have written to the Licensing Office of the Hong Kong Police Force (“**PLO**”), the Licensing Court at the Eastern Magistracy (“**Licensing Court**”) and the Money Lenders Section at CR (“**MLS-CR**”) to make enquiries as to whether the Subsidiaries had been in non-compliance of MLO since their incorporation. In reply:-

- (1) PLO confirmed that, until 7 July 2023, the Subsidiaries were not subject to any warning issued by the police, complaint, investigation, non-compliance or any revocation, suspension or cancellation of ML Licence since incorporation. PLO has received two complaints from members of public on 20 April 2021 and 28 July 2021 alleging that KC had breached Licensing Condition 10(c)⁴⁵ and contravened section 29(1)(c) of MLO (“**PLO Complaints**”). However, as both complainants later opted not to pursue with their complaints, investigation for both cases were curtailed in June and August 2021 respectively;
- (2) MLS-CR reported that: (a) Rectification Order was issued to the Subsidiaries on 26 June 2020 in relation to the non-compliance of one of the Licensing Conditions, but the non-compliance had been rectified on 13 July 2020 and no prosecution was taken against KC and KC-Ex; (b) during April 2020 and June 2022, a total of 6 complaints were received against KC (“**6 Complaints**”); (c) a complaint against KC was received after 22 February 2023 (with no detail given). Details of the 6 Complaints have been analyzed in Section (25) below. In summary, none of them provides any clear indication that the Subsidiaries have been in breach of the relevant guidelines or the Licensing Conditions, and even if there was any breach

⁴⁴ Section 32, MLO.

⁴⁵ i.e. the money lender and his debt collectors shall not, while trying to locate the whereabouts of debtors, harass anyone, adopt unlawful or improper debt collection practices.

of the Licensing Conditions, the same had been purged by the follow-up actions taken by the Subsidiaries.

103. Regarding the implication of the PLO Complaints and 6 Complaints on the propriety of the Subsidiaries and their directors:-

- (1) Investigation against the PLO Complaints has been curtailed. As a result, there can be no evidence to establish or substantiate any breach of Licensing Conditions and/or contravention of provisions under MLO, and it is unlikely that prosecution will be instigated against them;
- (2) For the 6 Complaints, I form the view (in paragraphs 239 to 241 below) that they provide no clear indication that there was a breach of the Licensing Conditions, and in any event if there was any breach of the Licensing Conditions the same had been purged by the follow-up actions taken by the Subsidiaries.

104. For the above reasons, I am satisfied that the risk of prosecution against the Subsidiaries or their management officials for breach of the Licensing Conditions is low.

105. In the premises, I am satisfied that the Subsidiaries and the Sample Loan Agreements have been in due compliance with the provisions in MLO during the Relevant Period.

(2) Money Lenders Regulations (Cap.163A) (“MLR”)

Change of Shareholdings

106. Regulation 10 of MLR further provides that the money lender shall notify the Registrar of Money Lenders of any change of shareholdings. Whilst re-organization is still pending, the Group confirms that notification will be sent to the ML Registrar once re-organization has completed.

Prohibited Security

107. Under regulation 12 of MLR, no money lender shall demand or accept as security for any loan any: (a) identity card, passport, warrant card or identity document; (b) bank savings

or deposit account book; or (c) photograph of the borrower or surety, or any family member of the borrower or surety. In this regard, the Subsidiaries have provided Code of Conduct setting out express protocol prohibiting their staff from performing the above conducts.

Enquiries

108. The Subsidiaries have written to the Licensing Office of PLO, the Licensing Court and MLS-CR to make enquiries as to whether the Subsidiaries had been in non-compliance of MLO since their incorporation. In reply:-

- (1) PLO confirmed that, until 7 July 2023, the Subsidiaries were not subject to any warning issued by the police, complaint, investigation, non-compliance or any revocation, suspension or cancellation of ML Licence since incorporation (save for the PLO Complaints referred to in section (1) above). As both complainants later opted not to pursue with their complaints, investigation for both cases were curtailed in June and August 2021 respectively;
- (3) MLS-CR reported that: (a) Rectification Order was issued to the Subsidiaries on 26 June 2020 in relation to the non-compliance of one of the Licensing Conditions, but the non-compliance had been rectified on 13 July 2020 and no prosecution was taken against KC and KC-Ex; (b) the 6 Complaints; (c) a complaint against KC was received after 22 February 2023 (with no detail given). In summary, none of them provides any clear indication that the Subsidiaries have been in breach of the relevant guidelines or the Licensing Conditions, and even if there was any breach of the Licensing Conditions, the same had been purged by the follow-up actions taken by the Subsidiaries and as a result are immaterial insofar as the Proposed Listing is concerned.

109. In the premises, I am satisfied that the Subsidiaries have been in due compliance of the provisions in MLR during the Relevant Period.

(3) Companies Ordinance (Cap.622) (“CO”)

Annual General Meetings

110. Under section 610 of CO, a private company must, in respect of each financial year, hold an annual general meeting (“AGM”) 9 months after the end of its accounting reference period.

111. During the Relevant Period, the Subsidiaries have duly convened their AGMs within the time limit prescribed by and in accordance with section 610 of CO. In particular:-

(1) KC has duly held its AGMs for the financial years 2019 (ended 31 December 2019), 2020 (ended 31 December 2020) and 2021 (ended 31 December 2021) respectively on 31 July 2020, 31 July 2021 and 28 June 2022 (“KC AGMs”);

(2) KC-Ex has duly held its AGMs for the financial years 2019 (ended 31 December 2019), 2020 (ended 31 December 2020) and 2021 (ended 31 December 2021) respectively on 31 July 2020, 31 July 2021 and 28 June 2022 (“KC-Ex AGMs”).

Statement of Accounts

112. Under section 429 of CO, a company’s directors must, in respect of each financial year, lay before the company in AGM a copy of the reporting documents for the financial year. Under section 430 of CO, the documents must be sent at least 21 days before the date of AGM.

113. According to the minutes of meetings provided by the Subsidiaries, the shareholders of KC and KC-Ex have unanimously accepted the Statement of Accounts and Reports of Directors and Auditors for the relevant financial years in all the KC AGMs and KC-Ex AGMs. In my view, the requirements under sections 429 and 430 of CO should have been satisfied.

Enquiries

114. The Subsidiaries have written to CR requesting for their compliance records since their incorporations. In reply, CR confirmed that, as of August 2023, it had not had any record

of non-compliance of CO by the Subsidiaries (and the subsidiary regulations made thereto insofar as they relate to the Subsidiaries).

115. In the premises, I am satisfied that the Subsidiaries have been in due compliance of the provisions in CO during the Relevant Period..

(4) Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap.32)
("C(W)O")

Matters of Prospectus

116. C(W)O provides for, inter alia, regulatory regimes on the information disclosed in and other matters relating to the issuing of the prospectus (Part II Division 1) and allotment of shares (Part II Division 2) for public companies. Misstatements in prospectus can result in criminal liability with a maximum penalty of a fine of HK\$700,000 and imprisonment for 3 years.

117. For the reasons given in Part 13 of this Section of the Legal Opinion, I am of the view that the statements set forth in the relevant sections of the Prospectus correctly and fairly reflect a summary of all respects of such laws.

Enquiries

118. The Subsidiaries have written to CR requesting for their compliance records since their incorporations. In reply, CR confirmed that, as of August 2023, it had not had any record of non-compliance of C(W)O by the Subsidiaries (and the subsidiary regulations made thereto insofar as they relate to the Subsidiaries).

119. In the premises, I am satisfied that the Subsidiaries have been in due compliance of the provisions in C(W)O during the Relevant Period.

(5) Mandatory Provident Fund Schemes Ordinance (Cap.485) (“MPFSO”)

Regulatory Regime

120. Under the scheme established by MPFSO, all employees aged between 18 and 65 years with monthly earning between HK\$7,100 and HK\$30,000 are obliged to contribute 5% of their income to the scheme; and those with monthly earning more than HK\$30,000 are obliged to contribute HK\$1,500 to the scheme. In the first instance, a contribution of 5% of the total monthly income must be made to the scheme by both the employee and employer, unless the income falls below the minimum threshold (in which case the employer alone is obliged to contribute). The employee and employer may, if they so prefer, make contribution in excess of the statutory minimum (such contribution shall be referred to as “MPF”).

121. Further, an employer has a duty to duly pay the MPF contribution for and on its own behalf and for the employees. An employer who, without reasonable excuse, fails to pay contribution (or failure to do so on time) commits a criminal offence, and is liable: (a) on first conviction, to a fine at HK\$100,000 and imprisonment for 6 months; (b) on subsequent occasion, to a fine of HK\$200,000 and imprisonment for 12 months.

MPF Contributions

122. As confirmed by the audited reports, the Subsidiaries had operated the MPF scheme under MPFSO during the Relevant Period for all of their employees in Hong Kong.

123. As confirmed by the Subsidiaries, the Subsidiaries have duly made all MPF contributions for their employees during the Relevant Period.

124. A search through the “Non-Compliant Employer and Officer Records” provided by the Mandatory Provident Fund Schemes Authority (“MPFSA”) (using the Subsidiaries’ business registration numbers and company names) reveals that none of the Subsidiaries has had any criminal conviction and/or civil award/judgment records in relation to MPFSO during the Relevant Period.⁴⁶

⁴⁶ <http://www.mpfa.org.hk/eng/enforcement/nceor/nceor.jsp>

125. In the premises, I am satisfied that the Subsidiaries have been in due compliance of the provisions in MPFSO during the Relevant Period.

(6) Inland Revenue Ordinance (Cap.112) (“IRO”)

Profits Tax

126. The IRO administers property tax, salaries tax and profits tax. Insofar as profits tax is concerned, it is charged on profits arising in or derived from Hong Kong for trade, profession or business (excluding profits arising from sale of capital assets) at rates provided in Schedule 8 for corporations and at the standard rate for sole proprietors, partnerships and other businesses which are unincorporated.

127. According to information and documents provided by the Group, it is confirmed that both KC and KC-Ex have duly paid their profits tax assessed for the years 2019/20 and 2020/21. Further, KC and KC-Ex have duly settled the profits tax assessed for the year 2021/22 on 3 January 2023.

Furnish of Information by Employer

128. Under section 52(2) of IRO, an employer shall, when required to do so by an assessor, furnish within a reasonable time a return containing the names, places of residence and full amount of remuneration of all its employees in receipt of remuneration in excess of a minimum figure to be fixed by the assessor.

129. Under sections 52(4) to 52(6) of IRO, an employer is required to provide information to the Commissioner of Inland Revenue on the following occasions:-

- (1) Where he employs someone in Hong Kong who is a married person or chargeable to salaries tax, he shall give notice within 3 months after the date of commencement of the employment, stating the full name, address, date of commencement and terms of the employment;
- (2) An employer shall give notice of cessation of employment of its employee within

1 month of the termination of such employment, giving the name, address and expected date of cessation;

- (3) An employer shall give notice of expected date of departure of his employee who is about to leave Hong Kong for any period exceeding 1 month within 1 month before the expected date of departure (unless the employee is required in the course of his employment to leave Hong Kong at frequent intervals).

130. Under section 80(1) of IRO, any person who without reasonable excuse fails to comply with the requirements above commits an offence and is liable to a fine at HK\$10,000; the court may order rectification within a specified time.
131. As confirmed by the Group, the Subsidiaries have duly complied with the above provisions of IRO.

Enquiries

132. According to the compliance information provided by the Inland Revenue Department (“IRD”), there was no record of non-compliance by the Subsidiaries during the Relevant Period, save that a warning letter was issued to KC on 24 September 2021 in respect of KC’s failure to comply with section 51(1) of IRO during the year of assessment 2019/20 (i.e. failure to furnish profit tax return within the period specified).⁴⁷
133. As clarified by KC, the original profit tax return was submitted within the period prescribed by IRD, and the late submission was caused by a request for re-submission from IRD. In any event, re-submission had been made by KC shortly after the deadline and IRD had confirmed in its letter of 24 September 2021 that no action would be taken against KC on that occasion. In the premises, I am of the opinion that the non-compliance is non-material and non-systemic.
134. In the premises, I am satisfied that the Subsidiaries have been in due compliance of the provisions in IRO during the Relevant Period.

⁴⁷ By another letter dated 12 November 2019, IRD also noted a 2-day’s delay by KC-Ex to submit the profits tax return for the year of assessment 2007/08. However, the said non-compliance took place a long time before the Relevant Period and in any event IRD has confirmed in the same letter that no action was or would be taken against KC-Ex for the non-compliance.

(7) Business Registration Ordinance (Cap.310) (“BRO”)

135. Under BRO, every person carrying on any business or commencing to carry on any business shall apply for the registration of the business. If a business is carried on at a branch of a business, application for the registration of that branch should also be made.

136. I have already opined on the compliance issued of BRO in Section 1 of this Legal Opinion. It suffices to say that the Subsidiaries are in compliance of the regime under BRO during the Relevant Period.

137. In the premises, I am satisfied that the Subsidiaries have been in due compliance of the provisions in BRO during the Relevant Period.

(8) Employment Ordinance (Cap.57) (“EO”)

Legislative Framework

138. EO applies to every employee engaged under a contract of employment in Hong Kong to an employer of such employee, and to a contract of employment between such employer and employee. EO provides the following entitlements or protections to an employee: (a) year-end payments; (b) maternity and paternity protection; (c) rest days; (d) protection against anti-union discrimination; (e) severance payment; (f) long service payment; (g) employment protection; (h) sickness allowance; (i) holidays with pay; (j) annual leave with pay. EO also affords other protection to employees such as maternity protection, paternity leave, protection against anti-union discrimination and employment protection.

139. Apart from the employees protection mentioned in Part I, EO also provides standard duties and obligations to be implied in contracts between employers and employees, as well as the formalities to be observed for employment contracts. For example:-

- (1) Section 9 of EO deals with situations in which the employer can summarily terminate the employment contract;

- (2) Section 10 of EO provides for circumstances in which an employee can regard himself as being constructively dismissed.
- (3) Section 11 of EO provides for circumstances in which an employer is permitted to suspend an employee.

Employment Contract Terms

140. The Subsidiaries have provided me with templates of employment contracts with their full-time and part-time employees (respectively “**Full-Time Contracts**” and “**Part-Time Contracts**”). The terms of the Full-Time Contracts and Part-Time Contracts are lawful, in compliance with the laws and regulations in Hong Kong and are enforceable save for the followings:-

- (1) Under Clause 17 of the Full-Time Contracts, the employees covenant not to directly or indirectly engage in any business or activities of money lender (as described in MLO) or any company carrying on similar business as the Subsidiaries whether as owner, director, employee or stakeholder (except as passive investor in publicly listed companies), within a period of 3 months (if as employee) or 1 year (if other than as employee) after cessation of their employment with the Subsidiaries (“**Non-Competition Clause**”). In general, clauses which impose restriction of trade in an employment contract is unenforceable unless it protects an interest of the employer that is considered by law to be properly protectable (which normally means trade secrets or customer connections, but not mere competition). The criteria for validity of such clause are stricter in a contract of employment, because the parties are less likely to bargain at arm’s length, and the Court is minded to ensure that the law is not used to stifle bona fide competition. The Court will not enforce any restraint which purports to go beyond the proper scope of the interest being protected.⁴⁸ In my view, the Non-Competition Clause is likely to be unenforceable as the clause is not targeting only against use of customer connection; the money lending business also does not entail any trade secrets. However, the unenforceability of the Non-Competition Clause would not invalidate the Full-Time Contracts entered into, as

⁴⁸ *Club Deluxe Ltd v Club Metropolitan Ltd* [1995] 2 HKLR 69

the said clause is clearly severable from the rest of the terms.

- (2) Clause 11(3) of the Part-Time Contracts provides that ‘excessive leave application’ (過多請假) is a ground for summary dismissal. Whether this is a valid ground of summary dismissal in law is debatable. In general, part-time employees are also protected by EO, and they would also be entitled to rest day, annual leave and sickness allowance if they are employed for more than 4 weeks and have been working for not less than 18 hours a week. Whether this is a valid ground of dismissal therefore depends on the circumstances. If an employee frequently applies for sick leave but without medical proof, it may be a valid ground of summary dismissal; but if an employee applies for sick leave with sufficient proof, frequent application per se will not be a good reason to dismiss him summarily. In any event, Clause 11(3) is clearly severable from the rest of terms and even if it is unenforceable it will not affect the overall validity of the Part-Time Contracts.

Guideline

141. The Group has issued “Human Capital Policies & Procedures – Leave Application Guideline” to ensure that the processing of leave application by the Subsidiaries is in compliance with EO.

Enquiries

142. The Subsidiaries have written to the Labour Department (“LD”) making enquiry as to whether the Subsidiaries had been in non-compliance of EO since their incorporations. In reply, LD confirmed that there was no record of non-compliance of EO by the Subsidiaries during the Relevant Period.
143. In the premises, I am satisfied that the Subsidiaries have been in due compliance of the provisions in EO during the Relevant Period.

(9) Employees' Compensation Ordinance (Cap.282) ("ECO")

Employer's Liability Insurance

144. Under ECO, no employer shall employ any employee in any employment unless there is in force in relation to such employee a policy of insurance issued by an insurer for an amount not less than the applicable amount specified in ECO⁴⁹ in respect of the employer's liability to his employees for injuries at work, irrespective of the length of employment contract or working hours, full-time or part-time employment. An employer who fails to comply with the above commits an offence and is liable to a maximum penalty of a fine at HK\$100,000 and imprisonment for 2 years. Moreover, an employer who fails to comply with the compulsory insurance requirement is liable to pay a surcharge to the Employees Compensation Assistance Fund Board under the Employees' Compensation Assistance Ordinance (Cap.365).

145. I have been provided with insurance policies (effective between 17 February 2022 and 16 February 2024) under which, inter alia, the Subsidiaries' liability as employers was insured. For period before 17 February 2022, I have been informed that the Subsidiaries have only had the coverage of public liability insurance. In this regard:-

- (1) The said public liability insurance policy covers accidental death, bodily injury of any person resulting from accidents in connection with the business or occupation. The insurance policy is therefore, arguably, not restricted to claims by third parties only;
- (2) Although generally there is a distinction between public liability insurance and employer's liability insurance (in that the former only covers claims by third parties, while the later only covers claims by employees), it would appear that the public liability insurance policy effective before 17 February 2022 might also cover claims by employees, thus satisfying the requirement for compulsory employer's liability insurance under ECO.

⁴⁹ For not more than 200 employees, the minimum insurance cover should be HK\$100 million. For 200 employees or more, the minimum insurance cover should be HK\$200 million or more.

Enquiries

146. The Subsidiaries have written to LD making enquiry as to whether they had been in non-compliance of ECO since their incorporations. In reply, LD confirmed that there was no record of non-compliance of ECO by the Subsidiaries during the Relevant Period.

147. In the premises, I am satisfied that the Subsidiaries have been in due compliance of the provisions in ECO during the Relevant Period.

(10) Trade Description Ordinance (Cap.362) (“TDO”)

Regulatory Regime

148. The following acts are prohibited under TDO: (a) use of false trade descriptions; (b) false, misleading or incomplete information, (c) false marks and misstatements in respect of products, and (d) false trade descriptions in respect of services supplied. Further, trade practices such as: (a) misleading omission; (b) aggressive commercial practices; (c) bait advertising; (d) bait and switch and (e) wrong acceptance of payment. Upon conviction, the offender may be liable to a maximum penalty of a fine of HK\$500,000 and imprisonment for 5 years.

149. Having reviewed the advertisement materials provided by the Group, I am not aware that the Subsidiaries have contravened any of the prohibited acts under the TDO during the Relevant Period. In my view, the Subsidiaries should be in due compliance of TDO during the Relevant Period.

Enquiries

150. The Subsidiaries have written to the Custom and Excise Department (“C&E”) making enquiry as to whether they had been in non-compliance of TDO since their incorporation (respectively 2008 and 1999). In reply, C&E stated that there was no conviction record against the Subsidiaries under the purview of C&E up to 13 July 2023.

151. In the premises, I am satisfied that the Subsidiaries have been in due compliance of the provisions in TDO during the Relevant Period.

(11) Drug Trafficking (Recovery of Proceeds) Ordinance (Cap.405) (“DT(RP)O”)

Regulatory Framework

152. Under the DT(RP)O, officers of the Hong Kong Police Force (“HKPF”) and C&E are empowered to investigate assets suspected to be derived from drug trafficking activities. The Court is also given jurisdiction to: (a) confiscate proceeds from drug trafficking activities; (b) grant restraint and charging orders in relation to a defendant’s realizable properties; and (c) order disclosure of information held by public bodies. DT(RP)O also makes it an offence for a person to deal with property known or believed to represent proceeds of drug trafficking.

153. DT(RP)O also provides for offences arising from act or inaction which may prejudice investigation, including: (a) an offence for failing to, as soon as it is reasonable for one to do so, disclose one’s knowledge or suspicion of any property representing a person’s proceeds of, was used in connection with, or is intended to be used in connection with drug trafficking (with maximum penalty of imprisonment of 3 months and a fine of HK\$50,000 upon conviction); (b) a ‘tipping-off’ offence for disclosing any matter which is likely to prejudice any investigation which might be conducted following a disclosure, if the said person knows or suspects that such disclosure has been made (with maximum penalty of imprisonment for 3 years and a fine upon conviction).

Code of Practice

154. Dealing with proceeds from drug trafficking amounts to an act of money laundering. It is therefore probable that drug traffickers and/or criminals working in association with drug traffickers may use the Business as an avenue for money laundering.

155. As analyzed above, the Group has taken appropriate steps to ensure that the operation of the Business complies with AML/CFT regulatory requirements. The measures taken are multi-faceted, including: (a) the issuing of various guidelines, policies and manuals to prevent act of money laundering on different aspects and to provide guidance of how to lawfully handle the situations in case of suspicion; (b) the offering of training and post-training tests to ensure that the directors, officers, employees and Intermediaries are up

to the requisite standards; (c) the establishment of departments and committees to ensure compliance of AML/CFT requirements on different levels and aspects; (d) the conduct of review by independent professional body on the design and operation of AML/CFT programs; and (e) the implementation of AML/CFT requirements in their contracts with agents.

156. In my opinion, the above measures are effective to ensure that the Subsidiaries are in compliance with the DT(RP)O in the operation of the Business.

157. In the premises, I am satisfied that the Subsidiaries have been in due compliance of the provisions in DT(RP)O during the Relevant Period.

(12) Organized and Serious Crimes Ordinance (Cap.455) (“OSCO”)

158. Under OSCO, officers of HKPF and C&E are empowered to investigate assets suspected to be derived from organized crimes and triad activities. The Court is given jurisdiction to: (a) confiscate proceeds from organized and serious crimes; (b) grant restraint and charging orders in relation to a defendant’s realizable properties; and (c) order disclosure of information held by public bodies. OSCO also makes it an offence for a person to deal with property known or believed to represent proceeds of indictable offences.

159. OSCO also provides for offences arising from act or inaction which may prejudice investigation, including: (a) an offence for failing to, as soon as it is reasonable for one to do so, disclose one’s knowledge or suspicion of any property representing a person’s proceeds of, was used in connection with, or is intended to be used in connection with an indictable offence (with maximum penalty of imprisonment of 3 months and a fine of HK\$50,000 upon conviction); (b) a ‘tipping-off’ offence for disclosing any matter which is likely to prejudice any investigation which might be conducted following a disclosure, if the said person knows or suspects that such disclosure has been made (with maximum penalty of imprisonment for 3 years and a fine upon conviction).

Code of Practice

160. Dealing with proceeds obtained or flowed from organized and serious crimes amounts to an act of money laundering. It is therefore probable that criminals may use the Business as an avenue for money laundering.

161. As analyzed above, the Group has taken appropriate steps to ensure that the operation of the Business complies with AML/CFT regulatory requirements. The measures taken are multi-faceted, including: (a) the issuing of various guidelines, policies and manuals to prevent act of money laundering on different aspects and to provide guidance of how to lawfully handle the situations in case of suspicion; (b) the offering of training and post-training tests to ensure that the directors, officers, employees and Intermediaries are up to the requisite standards; (c) the establishment of departments and committees to ensure compliance of AML/CFT requirements on different levels and aspects; (d) the conduct of review by independent professional body on the design and operation of AML/CFT programs; and (e) the implementation of AML/CFT requirements in their contracts with agents.

162. In my opinion, the above measures are effective to ensure that the Subsidiaries are in compliance with the OSCO in the operation of the Business.

Enquiries

163. The Subsidiaries have written to, inter alia, C&E making enquiry as to whether they had been in non-compliance of OSCO since incorporation. In reply, C&E stated that there was no conviction record against the Subsidiaries under its purview up to 13 July 2023.

164. In the premises, I am satisfied that the Subsidiaries have been in due compliance of the provisions in OSCO during the Relevant Period.

(13) United Nations (Anti-Terrorism Measures) Ordinance (Cap.575) (“UN(ATM)O”)

Regulatory Framework

165. UN(ATM)O implements decision of the Security Council of the United Nations in its Resolutions (“UNSCRs”) to prevent financing of terrorist acts and combating threats by foreign terrorist fighters. Under the UN(ATM)O, it is criminal offence for a person to: (a)

provide or collect property with the intention or knowing that it will be used to commit terrorist act; (b) make any property or financial services available to, or collect property or solicit financial services for the benefit of, the terrorist; (c) deal with terrorist property, or property owned, controlled by or held on behalf of terrorist (whether knowingly or recklessly). Upon conviction, a person can be subject to a maximum penalty of a fine and imprisonment of up to 14 years. The Secretary for Security also has power to freeze any property which he has reasonable ground to suspect that it is terrorist property.

166. UN(ATM)O also provides for offences arising from act or inaction which may prejudice investigation, including: (a) an offence for failing to, as soon as it is reasonable for one to do so, disclose one's knowledge or suspicion of any property representing a person's proceeds of, was used in connection with, or is intended to be used in connection with terrorist property (with maximum penalty of imprisonment of 3 months and a fine of HK\$50,000 upon conviction); (b) a 'tipping-off' offence for disclosing any matter which is likely to prejudice any investigation which might be conducted following a disclosure, if the said person knows or suspects that such disclosure has been made (with maximum penalty of imprisonment for 3 years and a fine upon conviction).

Code of Practice

167. The nature of the Business is money lending. It is therefore probable that terrorists may source funding of their terrorists' activities from the Business by disguising themselves as ordinary borrowers. Terrorists may also use the Business as the avenue for laundering proceeds of or intended to be used in connection with terrorists' activities.
168. As analyzed above, the Group has taken appropriate steps to ensure that the operation of the Business complies with AML/CFT regulatory requirements. The measures taken are multi-faceted, including: (a) the issuing of various guidelines, policies and manuals to prevent act of money laundering on different aspects and to provide guidance of how to lawfully handle the situations in case of suspicion; (b) the offering of training and post-training tests to ensure that the directors, officers, employees and Intermediaries are up to the requisite standards; (c) the establishment of departments and committees to ensure compliance of AML/CFT requirements on different levels and aspects; (d) the conduct

of review by independent professional body on the design and operation of AML/CFT programs; and (e) the implementation of AML/CFT requirements in their contracts with agents.

169. Further, as analyzed above, in assessing the intending borrowers' credits, the Subsidiaries also have the assistance of various AI technologies, such as the IDCM, SME Dashboard and RPA which bring into vast array of parameters to ensure a more accurate assessment on the credits of the intending borrowers.

170. In my opinion, the above measures are effective to ensure that the Subsidiaries are in compliance with the UN(ATM)O in the operation of the Business.

Enquiries

171. The Subsidiaries have written to, inter alia, C&E making enquiry as to whether the Subsidiaries had been in non-compliance of UN(ATM)O since incorporation. In reply, C&E stated that there was no conviction record against the Subsidiaries under its purview up to 13 July 2023.

172. In the premises, I am satisfied that the Subsidiaries have been in due compliance of the provisions in UN(ATM)O during the Relevant Period.

(14) United Nations Sanctions Ordinance (Cap.537) ("UNSO")

Regulatory Framework

173. UNSO provides for the imposition of sanctions against persons and places outside the People's Republic of China ("PRC") arising from Chapter 7 of the Charter of the United Nations. Section 3 of UNSO empowers the Chief Executive to make regulations to give effect to the instruction by the Ministry of Foreign Affairs of the PRC, and to provide that a contravention of such regulation shall be an offence.

174. Currently, the following countries and entities are subject to targeted financial sanctions under the regulations made under UNSO:-

- (1) Afghanistan;⁵⁰
- (2) Central African Republic;⁵¹
- (3) Democratic Republic of Congo;⁵²
- (4) Democratic People's Republic of Korea;⁵³
- (5) Iran;⁵⁴
- (6) ISIL and Al-Qaida;⁵⁵
- (7) Libya;⁵⁶
- (8) Mali;⁵⁷
- (9) Somalia;⁵⁸
- (10) South Sudan;⁵⁹
- (11) Sudan;⁶⁰
- (12) Yemen.⁶¹

175. Under the relevant regulations, a person acting in Hong Kong and a Hong Kong person acting outside Hong Kong must not directly or indirectly: (a) provide any assistance related to military activities to, (b) make available any economic assets to or deal with any economic assets belonging to or owned or controlled by, (c) provide any financial services to, transfer or accept or make available or deal with any funds or financial assets or economic resources that could contribute to a prohibited program or activity, (d) provide financial support to any person for trade with a person connected with, any of the above countries or entities.

Code of Practice

176. As analyzed above, the Group has taken appropriate steps to ensure that the operation of the Business complies with AML/CFT regulatory requirements. The measures taken are

⁵⁰ Section 25, United Nations Sanctions (Afghanistan) Regulation (Cap.537CN)

⁵¹ Section 33, United Nations Sanctions (Central African Republic) Regulation (Cap.537CM)

⁵² Section 29, United Nations Sanctions (Democratic Republic of the Congo) Regulation (Cap.537CJ)

⁵³ Section 31, United Nations Sanctions (Democratic People's Republic of Korea) Regulation (Cap.537AE)

⁵⁴ Section 39, United Nations Sanctions (Joint Comprehensive Plan of Action – Iran) Regulation (Cap.537BV)

⁵⁵ Section 25, United Nations Sanctions (ISIL and Al-Qaida) Regulation (Cap.537CB)

⁵⁶ Section 43, United Nations Sanctions (Libya) Regulation (Cap.537CF)

⁵⁷ Section 15, United Nations Sanctions (Mali) Regulation (Cap.537CL)

⁵⁸ Section 29, United Nations Sanctions (Somalia) Regulation (Cap.537CG)

⁵⁹ Section 33, United Nations Sanctions (South Sudan) Regulation (Cap.537CK)

⁶⁰ Section 31, United Nations Sanctions (Sudan) Regulation (Cap.537BF)

⁶¹ Section 31, United Nations Sanctions (Yemen) Regulation (Cap.537CI)

multi-faceted, including: (a) the issuing of various guidelines, policies and manuals to prevent act of money laundering on different aspects and to provide guidance of how to lawfully handle the situations in case of suspicion; (b) the offering of training and post-training tests to ensure that the directors, officers, employees and Intermediaries are up to the requisite standards; (c) the establishment of departments and committees to ensure compliance of AML/CFT requirements on different levels and aspects; (d) the conduct of review by independent professional body on the design and operation of AML/CFT programs; and (e) the implementation of AML/CFT requirements in their contracts with agents.

177. Further, in assessing the intending borrowers' credits, the Subsidiaries also have the assistance of various AI technologies, such as the IDCM, SME Dashboard and RPA, which bring into vast array of parameters to ensure a more accurate assessment on the credits of the intending borrowers.

178. In my opinion, the above measures are effective to ensure that the Subsidiaries are in compliance with the UNSO in the operation of the Business.

179. In the premises, I am satisfied that the Subsidiaries have been in due compliance of the provisions in UNSO during the Relevant Period.

(15) Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap.615)
("AMLO")

Regulatory Regime

180. Under AMLO, requirements are imposed on financial institutions to conduct customer due diligence ("CDD") and record-keeping. AMLO also empowers the Hong Kong Monetary Authority ("HKMA") to supervise compliance of these requirements and other requirements under AMLO. Further, financial institutions are required to take reasonable measures to: (a) ensure proper safeguards to prevent contravention of any requirement under Parts 2 and 3 of Schedule 2; and (b) mitigate AML/CFT risks. The followings are criminal offences under AMLO:-

- (1) If a financial institution, knowingly or with intent to defraud HKMA, contravenes a specified provision enlisted in section 5(11) of AMLO, the financial institution upon conviction is liable to a maximum penalty of: (a) imprisonment for 2 years and a fine of HK\$1 million (if knowingly contravenes a specified provision), or (b) imprisonment for 7 years and a fine of HK\$1 million (if with intent to defraud HKMA);
- (2) If a person, being an employee or is concerned in the management of the financial institution, knowingly or with intent to defraud HKMA or the financial institution, causes or permits the financial institution to contravene a specified provision of AMLO, the person upon conviction can be liable to a maximum penalty of: (a) imprisonment for 2 years and a fine of HK\$1 million (if knowingly contravenes a specified provision), or (b) imprisonment for 7 years and a fine of HK\$1 million (if with intent to defraud HKMA or the financial institution);

181. Further, for contravention of specified provision in AMLO, HKMA may also take disciplinary actions against the financial institution concerned through, inter alia: (a) public reprimanding; (b) ordering the financial institution to remedy the contravention; and (c) ordering the financial institution to pay a pecuniary penalty not exceeding HK\$10 million or 3 times the amount of profit gained or costs avoided by the financial institution as a result of the contravention, whichever is greater.

182. On 7 December 2022, the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022 was passed by the Legislative Council and the regulatory regimes under the licensing and registration systems were respectively extended to virtual asset exchange business and precious metal and stones.

Compliance

183. As analyzed above, the Group has taken appropriate steps to ensure that the operation of the Business complies with AML/CFT regulatory requirements. The measures taken are multi-faceted, including: (a) the issuing of various guidelines, policies and manuals to prevent act of money laundering on different aspects and to provide guidance of how to

lawfully handle the situations in case of suspicion; (b) the offering of training and post-training tests to ensure that the directors, officers, employees and Intermediaries are up to the requisite standards; (c) the establishment of departments and committees to ensure compliance of AML/CFT requirements on different levels and aspects; (d) the conduct of review by independent professional body on the design and operation of AML/CFT programs; and (e) the implementation of AML/CFT requirements in their contracts with agents.

184. In my opinion, the above measures are effective to ensure that the Subsidiaries are in compliance with the AMLO in the operation of the Business.

Enquiries

185. The Subsidiaries have written to C&E, HKMA, Insurance Authority (“IA”) and the Securities and Futures Commission (“SFC”) making enquiry as to whether they had been in non-compliance of AMLO since incorporation. Among the replies from these authorities, C&E stated that there was no conviction record against the Subsidiaries under its purview up to 13 July 2023.⁶²

186. In addition, CR also confirmed that, as of August 2023, it had no record of any disciplinary action towards the Subsidiaries under Part 5A of AMLO.

187. In the premises, I am satisfied that the Subsidiaries have been in due compliance of the provisions in AMLO during the Relevant Period.

(16) HKMA’s Guideline on Anti-Money Laundering and Counter-Terrorist Financing by (“HKMA’s AML/CFT Guideline”)

188. HKMA’s AML/CFT Guideline was published under section 7 of AMLO and section 7(3) of the Banking Ordinance (Cap.155) (“BO”). It sets out the statutory requirements under AMLO and BO and the standards which authorized institutions (“AIs”) should meet in order to comply with them by providing practical guidance to assist AIs and their senior

⁶² SFC refused to provide the information request on the ground of its statutory obligation to preserve secrecy of information, while HKMA and IA indicated that they were not in the position to provide the requested information as the Subsidiaries were not bodies regulated by them.

management in designing/implementing their own policies, procedures and controls in the relevant operational areas. AIs which fail to comply with HKMA's AML/CFT Guideline may be subject to disciplinary or other actions under AMLO and/or BO, and may reflect adversely on whether the AIs continue to comply with the authorization criteria set out in the Seventh Schedule of BO.

Compliance

189. As analyzed above, the Group has taken appropriate steps to ensure that the operation of the Business complies with AML/CFT regulatory requirements. The measures taken are multi-faceted, including: (a) the issuing of various guidelines, policies and manuals to prevent act of money laundering on different aspects and to provide guidance of how to lawfully handle the situations in case of suspicion; (b) the offering of training and post-training tests to ensure that the directors, officers, employees and Intermediaries are up to the requisite standards; (c) the establishment of departments and committees to ensure compliance of AML/CFT requirements on different levels and aspects; (d) the conduct of review by independent professional body on the design and operation of AML/CFT programs; and (e) the implementation of AML/CFT requirements in their contracts with agents.

190. In my opinion, the above measures are effective to ensure that the Subsidiaries are in compliance with the HKMA's AML/CFT Guideline in the operation of the Business.

Enquiries

191. The Subsidiaries have written to C&E and SFC making enquiry as to whether they had been in non-compliance of HKMA's AML/CFT Guideline since their incorporation. In reply, C&E stated that there was no conviction record against the Subsidiaries under its purview up to 13 July 2023.

192. In the premises, I am satisfied that the Subsidiaries have been in due compliance of the provisions in HKMA's AML/CFT Guideline during the Relevant Period.

(17) SFC's Prevention of Money Laundering and Terrorist Financing Guideline ("SFC's PML/TF Guideline")

193. SFC's PML/TF Guideline, which was issued under section 399 of the Securities and Futures Ordinance (Cap.571) ("SFO"), sets out the relevant statutory requirements under AMLO and SFO and the standards which licensed corporations ("LCs") should meet by providing practical guidance to assist LCs and their senior management in designing/implementing their own policies, procedures and controls in the relevant operational areas. The SFC's PML/TF Guideline is intended for use by associated entities ("AEs") which are not AIs and their officers. A failure by any person to comply with any provision of the SFC's PML/TF Guideline does not by itself render that person liable to any judicial proceedings, but the SFC's PML/TF Guideline is admissible as evidence in legal proceedings under SFO. Any failure by AEs to have regard to the provisions thereof may reflect adversely on its fitness and propeness (and those of the intermediary of which the AEs are in a controlling entity relationship).

Compliance

194. As analyzed above, the Group has taken appropriate steps to ensure that the operation of the Business complies with AML/CFT regulatory requirements. The measures taken are multi-faceted, including: (a) the issuing of various guidelines, policies and manuals to prevent act of money laundering on different aspects and to provide guidance of how to lawfully handle the situations in case of suspicion; (b) the offering of training and post-training tests to ensure that the directors, officers, employees and Intermediaries are up to the requisite standards; (c) the establishment of departments and committees to ensure compliance of AML/CFT requirements on different levels and aspects; (d) the conduct of review by independent professional body on the design and operation of AML/CFT programs; and (e) the implementation of AML/CFT requirements in their contracts with agents.

195. In my opinion, the above measures are effective to ensure that the Subsidiaries are in compliance with the SFC's PML/TF Guideline in the operation of the Business.

196. In the premises, I am satisfied that the Subsidiaries have been in due compliance of the provisions in HKMA's AML/CFT Guideline during the Relevant Period.

(18) Personal Data (Privacy) Ordinance (Cap.486) (i.e. "PD(P)O")

Regulatory Regime

197. Subject to the lawfulness of the means of data collection, there is no laws in Hong Kong regulating the collection of data unless the data is 'personal data' of which the collection and processing are governed by PD(P)O. For the data to constitute 'personal data' they must fulfill the following 3 criteria. Data not fulfilling *all* criteria are excluded from the definition of 'personal' data under PD(P)O. In essence:-

- (1) The data must relate to an individual;
- (2) That individual must be reasonably identifiable from the data;
- (3) The data must be reasonably retrievable.

198. The regulatory regime under PD(P)O is applied through 6 data-protection principles regarding: (i) collection, (ii) accuracy and retention, (iii) use, (iv) security, (v) openness and (vi) the right of data subject to access and correct personal data ("**Data Principles**"). The Data Principles can be properly complied with if the following measures are taken:-

- (1) 'Principle 1' – The data user must: (a) ensure that only data that are really relevant to the operation are being collected; (b) precisely identify what data it needs and why; (c) once identified these data purposes must be specified whenever data are collected; (d) classes of transferees must be identified; (e) adequacy of forms and interview sheets should be accordingly reviewed; (f) parameters regarding acceptable data collection methods should be defined and promulgated.
- (2) 'Principle 2' – The data user must: (a) classify the types of data held and impose appropriate retention periods; (b) take steps to impose measures, e.g. issue guidelines to ensure accuracy of newly acquired data; (c) utilize regular data subject input to supplement the more formal (and sporadic) channel of access and

correction rights; (d) cause to prepare records of transferees to enable them to be notified of any subsequent corrections.

- (3) 'Principle 3' – If personal data is used for a purpose other than the purpose of collection (or a directly related purpose), the data user must ensure that an exemption applies⁶³ or the data subject's prescribed consent is obtained.⁶⁴
- (4) 'Principle 4' – The data user must take all reasonably practicable steps to protect personal data. In particular, the data user must: (a) classify its data holdings according to their sensitivity; (b) make assessment regarding potential security risks and the corresponding protective measures required.⁶⁵
- (5) 'Principle 5' – The data user should: (a) be open and transparent not only to data subjects but the public generally regarding their data policies and practices, the kinds of personal data held, and their main purposes; (b) promulgate the above by convenient means ranging from notice-boards to web-site statements.
- (6) 'Principle 6' – The data user should: (a) provide data subject with the right to ascertain whether data user holds data on him; (b) if so, provide data subject with the right to access, correct or qualify the data.

199. In the event of breach of the Data Principles or other provisions of PD(P)O (which is usually due to a complaint lodged by a data subject under section 37 of PD(P)O):-

⁶³ Part VIII of PD(P)O specifies the circumstances in which the Data Principles may be departed from, i.e. where compliance would otherwise result in prejudice to specified competing interests. Most of the exemptions only dispense with the requirements of Principles 3 and 6. For the most part the exemptions correspond with general public interests such as law enforcement or health. Whether an exemption is invoked is at the data user's discretion and it should accordingly establish clear policies regarding the use of exemptions to achieve consistency in their application.

⁶⁴ 'Prescribed consent' is defined in section 2(3) of PD(P)O as "the express consent of the person given voluntarily". The requirement would not be fulfilled by merely advising a data subject that a change of purpose was proposed unless his objection is received. It is also implicit in the concept of 'consent' that it be informed. This requires that the consent must relate to a reasonably specific proposition, instead of a blanket acquiescence without meaningful restrictions. Subject to these provisos, a single consent may relate to a series of transactions. For example, see: *Wing Lung Bank Ltd v Privacy Commissioner for Personal Data* [2010] 6 HKC 266.

⁶⁵ 'Principle 4' applies to data which is not reasonably practicable to retrieve or process. This accommodates the concern that unstructured data may upon falling into the wrong hands then be organised and systematically used to the detriment of the data subject.

- (1) For less serious breaches, Privacy Commissioner for Personal Data (“PCPD”) will endeavor to mediate and seek a mutually acceptable outcome in compliance with PD(P)O;
- (2) For more serious breaches (e.g. continuing or likely repeating breaches), PCPD may issue an enforcement notice. There is, however, no power on PCPD to award compensation or order apology;⁶⁶
- (3) The data subject may, in addition or as an alternative to a complaint lodged with PCPD, institute civil proceedings in the District Court for damages;
- (4) For breach of the provisions of PD(P)O (other than the Data Principles), criminal sanctions are provided. PCPD can refer an offence to the Secretary for Justice for prosecution, although the latter has a discretion as to whether to proceed.

Doxxing Act – Personal Data (Privacy) (Amendment) Ordinance 2021 (“PD(P)AO”)

200. PD(P)AO came into effect on 8 October 2021. The major amendment under PD(P)AO aims to combat ‘doxxing act’ which are intrusive to personal data privacy through the criminalization of such act and conferring PCPD the statutory power to carry out criminal investigations, institute prosecution of doxxing and related offences, and issue cessation notices demanding the cessation or restriction of disclosure of doxxing messages.

201. Pursuant to PD(P)AO, anyone who discloses the personal data of another person without consent, whether recklessly or with intent to cause specified harm to the person or his or her family (for example, harassment, molestation, pestering, threat, intimidation, bodily or psychological harm or damage to property), commits an offence of doxxing. Any person who commits the offence is liable to a maximum penalty of a fine at HK\$100,000 and to imprisonment for 2 years. If the disclosure has caused specific harm to the person or his or her family, the person liable will be subject to a maximum penalty of a fine at

⁶⁶ See: *Chan v Privacy Commissioner for Personal Data*, AAB No 4/1997, 10 July 1997.

HK\$100,000 and to imprisonment for 5 years. PCPD has also in October 2021 published an Implementation Guideline for public information.

202. One should further note that under PD(P)AO, 'consent' refers to an express consent given by the data subject voluntarily, which has not been withdrawn by serving a notice in writing.

Code of Practice

203. A person carrying on the business of money lender in Hong Kong will or may also have to observe the Code of Practice on Consumer Credit Data ("**PCPD Code**") issued by the Office of the PCPD pursuant to the powers conferred under section 12 of PD(P)O.
204. PCPD Code is designed to provide practical guidance in handling the collection, accuracy, use, security, access and correction of consumer credit data. It covers credit reference agencies and credit providers in their dealing with credit reference agencies and debt collection agencies. A breach of, or failure to observe, the PCPD Code will give rise to a presumption against the data user in any legal proceedings under PD(P)O, and may also weigh unfavourably against the data user in any case brought before the PCPD.

Documents & Information Obtained

205. As confirmed by the management of the Subsidiaries in due diligence, the applicant of a loan would usually be required to provide:-
- (1) For Personal Loan – bank statements, income proof, address proof, identity documents of the applicant and data consent for credit report;
 - (2) For SME Loan – business registration, annual return, bank statements, audited financial reports, management accounts, leasing contracts, guarantor's identity documents, applicant's and guarantor's consent with TransUnion ("**TU**") reports;
 - (3) For Property Owner Loan – address proof, applicant's identity document, income proof, rate and management receipts.

Compliance

206. Having perused the documents and information provided by the Group, I am satisfied that the general practice of the Subsidiaries in the ordinary conduct of their Business have complied with the requirements under PD(P)O. For instance:-

- (1) The Group has issued various guidelines, policies and code of practice for the staff in handling personal data of its customers and employees, including:-
 - (a) Group Data Privacy Policy for Customer Data;⁶⁷
 - (b) Group Data Privacy Policy for Employee Data;⁶⁸
 - (c) Information Security Policies;⁶⁹
 - (d) Management Policies of Legal Department;
- (2) It is confirmed by the legal department of the Group that the Subsidiaries have implemented the appropriate privacy policy and mechanisms and kept itself alert with the change in respect of what circumstances the staff who accesses to data would not infringe PD(P)O and the EU General Data Protection Regulation to protect the personal data of their customers and employees;
- (3) It is confirmed by the human capital department of the Group that all staff and management of the Subsidiaries have signed confidentiality agreement (as part of their employment agreements) and a non-disclosure agreement;
- (4) Under the Debt Collection Agreement, the Debt Collecting Agent covenanted to ensure that the provision of service comply with, inter alia, PD(P)O, “Privacy Guidelines: Monitoring and Personal Data Privacy at Work”, other applicable guidelines issued by PCPD (including the PCPD Code) and other written privacy policy formulated by governmental authorities with reference to the guidelines. Further, under the Guideline for Debt Collection Agent, the debt collecting agent

⁶⁷ Update to 1 November 2022

⁶⁸ Update to 27 April 2018

⁶⁹ Update to 5 October 2022

is also required to abide by PD(P)AO by refraining from committing the doxing offence;

- (5) Under the Appointment Agreements, the Intermediaries covenanted, inter alia, not to obtain or collect personal data of borrower or use such data unless express consent from the borrower is obtained and the collection and/or use will not be in contravention of PD(P)O.

207. Insofar as to the various financial technologies deployed by the Subsidiaries in the conduct of the Business:-

- (1) IDCM is relied upon to classify loan applicants by differentiating them by their credit ratings, and to enable the Subsidiaries to use risk-based pricing to reflect each of their unique risk profile. IDCM combines the application of big data and machine learning technologies to analyze credit data and behaviour patterns based on certain pre-set parameters, resulting in the generation of AQM Score and MLC Score. In this regard, the Subsidiaries have provided protocol for development of IDCM which prevents it from violating the data privacy law;
- (2) Insofar as the Finger Vein Scanning deployed by the Subsidiaries since 2020, the Subsidiaries have provided the Terms of Use of the Finger Vein Authentication to be observed by customers, and to ensure that customers' consent is obtained before collecting the data from the customers' finger vein.

208. In the premises, I am satisfied that the Subsidiaries have been in due compliance of the provisions in PD(P)O during the Relevant Period.

(19) Conveyancing and Property Ordinance (Cap.219) ("CPO")

Conveyancing Formalities

209. Under CPO, no action shall be brought upon any contract for sale or other disposition of land, unless the agreement (or some memorandum or note thereof) is in writing and signed by the party to be charged or person authorized by him.

210. In respect of the legal estate and equitable interest in land, the following rules are created by CPO:-

- (1) Legal estate in land can only be created, extinguished or disposed of by deed;
- (2) Equitable interest in land can only be created or disposed of by writing signed by the person creating or disposing of the same (or by his agent authorized in writing, or by will or operation of law).

211. All interest in land created orally (and not put in writing and signed by the persons creating them) have the force and effect of interests at will only, notwithstanding that any consideration has been given for the same.

Mortgage

212. CPO also provides that a mortgage of legal estate (including any second or subsequent mortgage of the legal estate) can only be effected by a charge by deed expressed to be a legal charge, under which the mortgagor and the mortgagee shall have the same protection, powers and remedies (including foreclosure and equity of redemption, but excluding power to enter into possession before default by mortgagor) as if the mortgage is effected by way of assignment of the legal estate.

Voidable Disposition

213. CPO stipulates that any disposition of property made with intent to defraud creditors shall be voidable at the instance of any person prejudiced. The rule however does not extend to any estate or interest in land disposed of for valuable consideration and in good faith or upon good consideration and in good faith to any person not having notice of the intent to defraud creditors at the time of the disposition. Further, every voluntary disposition of land made with intent to defraud a subsequent purchaser is voidable at the instance of that purchaser.

Compliance

214. During the Relevant Period, the Subsidiaries are principally engaged in the Business of

provision of un-secured loan. The Subsidiaries offered un-secured loans to owners of properties but those properties were not provided as collateral to the loans. Since the un-secured loan business does not involve any mortgage/charge/lien over the borrowers' properties, CPO has no application to the Subsidiaries' un-secured loan business.

215. In the premises, I am satisfied that the Subsidiaries have been in due compliance of the provisions in CPO during the Relevant Period.

(20) Land Registration Ordinance (Cap.128) ("LRO")

Registration of Instruments

216. Under LRO, all deeds, conveyances, other instruments in writing and judgments which may affect land ("**Registrable Instruments**") is registrable in the Land Registry. Registrable Instruments registered in the Land Registry shall have priority according to the priority of their respective dates of registration. For Registrable Instruments which are not registered in the Land Registry, they shall be absolutely null and void as against any subsequent bona fide purchaser or mortgagee for valuable consideration. The system established under LRO is one of registration of deeds and not one of registration of title. The registration only provides evidence of title and gives priority to owner of a prior registered interest over a subsequent one. Title is not guaranteed through registration.

217. The purpose of LRO is to prevent secret and fraudulent conveyances, and to provide means whereby the title to real and immovable property may be easily traced and ascertained. Hence, all disposition of land and judgments relating to land have to be registered, and a system of priorities of registered documents was provided.

Compliance

218. During the Relevant Period, the Subsidiaries are principally engaged in the Business of provision of un-secured loan. The Subsidiaries offered un-secured loans to owners of properties but those properties were not provided as collateral to the loans. Since the un-secured loan business does not involve any creation of proprietary right in favour of the Subsidiaries (as the lender/mortgagee/charge), LRO has no application to the Subsidiaries' un-secured loan business.

219. In the premises, I am satisfied that the Subsidiaries have been in due compliance of the provisions in LRO during the Relevant Period.

(21) Stamp Duty Ordinance (Cap.117) (“SDO”)

Stampable Instruments

220. Every instrument specified in the First Schedule of SDO (including leases and their counterparts) is chargeable with stamp duty wherever it is executed. If any instrument chargeable with stamp duty is not duly stamped, the person specified as being liable for stamping and any person who uses the instrument shall be liable for payment of stamp duty and the penalty.

221. The unstamped instrument will remain inadmissible in evidence for most purposes by virtue of section 15(1) of SDO if stamp duty is unpaid.

Compliance

222. As stated above, the tenancy agreements in respect of Shau Kei Wan Shop and the Mid-level Lease are not stamped. Although the lack of stamping may render them inadmissible in evidence for most purposes under section 15(1) of SDO, it shall not affect the validity and lawfulness of these documents, and the parties’ rights and obligations under them (including the right as tenants not to be unlawfully evicted during the term of the tenancy) should remain enforceable.

223. Under section 4(3) of SDO, if any instrument chargeable to stamp duty is not duly stamped, the person liable for stamping⁷⁰ and the person who uses such instrument shall be liable civilly to the Collector of Stamp Duty for payment of the stamp duty and penalty payable under section 9, 45(5A)(d) or 47H(3),⁷¹ and may be proceeded against without reference to any civil liability of such person inter se for the payment thereof. In any

⁷⁰ In the case of a tenancy agreement, all parties executing the tenancy agreement will be liable for stamp duty under the First Schedule.

⁷¹ Under section 9 of SDO, if the instrument is stamped later than 2 months after the time for stamping, the penalty shall be 10 times the amount of the stamp duty. For breach of sections 45(5A)(d) and 47H(3), the amount of penalty shall be calculated in accordance with section 9 of SDO.

event, failure to stamp an instrument does not attract criminal liability under SDO, and any non-compliance does not constitute material or systemic breach by the relevant official.

Enquiries

224. The Subsidiaries have written to the IRD making enquiry as to whether they had been in non-compliance of SDO since their incorporations. As replied by the IRD, the Subsidiaries had not been aware of any breach of the provisions of SDO during the Relevant Period.

225. In the premises, I am satisfied that the Subsidiaries have been in due compliance of the provisions in SDO during the Relevant Period.

(22) Control of Exemption Clauses Ordinance (Cap.71) (“CECO”)

Regulatory Regime

226. Under CECO, a person cannot by reference to any contract term or notice given exclude or restrict his liability for negligence except in so far as the term or notice satisfies the requirement of reasonableness under section 3 of CECO. Further, in a contract when one deals as consumer or on the other’s written standard terms of business, a party (as against that consumer) cannot by reference to any contract term exclude or restrict his liability or claim to be entitled to render a contractual performance substantially different from that which was reasonably expected of him or render no performance at all, except the contract term satisfies the requirement of reasonableness under section 3 of CECO.

Use of Exemption Clause in the Business

227. I have reviewed all the contracts stipulated in the section ‘Material Contracts’ above and I am not aware of any exemption clause therein as falling below the requirement of reasonableness under section 3 of CECO.

228. In the premises, insofar as those contracts stipulated in the section ‘Material Contracts’ are concerned, I am satisfied that they are in compliance with the provisions of CECO during the Relevant Period.

229. In the premises, I am satisfied that the Subsidiaries have been in due compliance of the provisions in CECO during the Relevant Period.

(23) Unconscionable Contracts Ordinance (Cap.458) (“UCO”)

Regulatory Regime

230. Under UCO, if the Court finds that a contract for sale of goods or supply of services (in which one of the parties deals as consumer) to be unconscionable in the circumstances relating to the contract at the time it was made, the court may: (a) refuse to enforce the contract; (b) enforce the remainder of the contract without the unconscionable part; or (c) limited the application of, or revise or alter, any unconscionable part to avoid unconscionable result.

Compliance

231. I have reviewed all the contracts stipulated in the section ‘Material Contracts’ above. In my view, among those material contracts, only the Debt Collection Agreements and the Appointment Agreements are arguably contracts for supply of services and are therefore governed by UCO.

232. For the Debt Collection Agreements and the Appointment Agreements, I am not aware of any exemption clause therein as being unconscionable within the meaning of UCO and is therefore unenforceable or may become unenforceable.

233. Insofar as the Debt Collection Agreements and the Appointment Agreements are concerned, I am satisfied that they are in compliance with the provisions of UCO during the Relevant Period.

234. In the premises, I am satisfied that the Subsidiaries have been in due compliance of the provisions in UCO during the Relevant Period.

(24) Supply of Services (Implied Terms) Ordinance (Cap.457) (“SS(IT)O”)

Regulatory Regime

235. Under SS(IT)O, certain terms are statutorily implied in a contract for the supply of service, such as: (a) the supplier will carry out the service with reasonable care and skill; (b) the supplier will carry out the service within a reasonable time (where time is not fixed in contract or in a manner agreed or determined by course of dealing); and (c) the party contracting with the supplier will pay a reasonable charge (if the consideration is not determined by the contract or left to be determined in a manner agreed or by course of dealing between the parties). Implied terms under SS(IT)O cannot be ousted by reference to any contract term.

Compliance

236. I refer to my analysis above. In my view, among those material contracts, only the Debt Collection Agreements and the Appointment Agreements are arguably contracts for supply of services and are therefore governed by SS(IT)O.

237. For the Debt Collection Agreements and the Appointment Agreements, I am of the view that the terms statutorily implied under SS(IT)O shall be incorporated in them and any term with effect to oust their applications shall be void.

238. The implied terms under SS(IT)O are ordinary contract terms. I am not aware of any evidence that the Subsidiaries have been unable to fulfill them during the Relevant Period. In the premises, I am satisfied that the Subsidiaries are in compliance with the provisions of SS(IT)O during the Relevant Period.

239. In the premises, I am satisfied that the Subsidiaries have been in due compliance of the provisions in SS(IT)O during the Relevant Period.

(25) Guidelines on Additional Licensing Conditions of Money Lenders Licences issued by CR (“CR’s Guidelines”)

Regulatory Regime

240. CR’s Guidelines aim to provide guidance on the requirements of additional licensing conditions imposed to facilitate effective enforcement of statutory ban on separate fee charged by money lenders and their connected parties, to ensure better protection of

privacy of intending borrowers, to enhance transparency and disclosure, and to promote the importance of prudent borrowing.

Compliance

241. As analyzed above, the Group has taken appropriate steps to ensure that the Subsidiaries are in due compliance with the Licensing Conditions. In summary, those steps include implementation of system to ensure that: (a) their staff would duly discharge the duty to enquire and explain with intending borrowers before granting of loans; (b) no charge or reward would be received from borrower in relation to procuring, negotiation, obtaining or application of loan and no subsidized housing would be received as collateral; (c) the requisite information of Intermediaries and Business would be provided to CoP and ML Registrar by taking reasonable steps; (d) implementation of thorough procedures and measures to comply with AML/CFT requirements under existing statutes and codes; (e) implementation of system to properly assess the credit of borrowers; (f) implementation of system to maintain strict adherence of PD(P)O and protection of data; (g) measure being taken to control and manage the lawfulness of debt collecting procedure; and (h) procedure and guidelines being set up to ensure that employees and agents observe the Licensing Conditions and provisions in MLO.

242. In my opinion, the above measures are effective to ensure that the Subsidiaries are in compliance with the CR's Guidelines in the operation of the Business.

Enquiries

243. The Subsidiaries have written to the MLS-CR making enquiry as to whether they had been in non-compliance with the applicable laws and regulations under its purview for the period from the dates of their incorporations to 7 July 2023. In reply, MLS-CR confirmed that:-

- (1) Rectification Order was issued to KC and KC-Ex on 26 June 2020 in relation to the non-compliance of one of the Licensing Conditions, but the non-compliance had been rectified on 13 July 2020 and no prosecution was taken against KC and KC-Ex;

- (2) During April 2020 and June 2022, a total of 6 complaints were received against KC (i.e. “**6 Complaints**”) and a further complaint against KC was received after 22 February 2023. However, no document in relation to those complaints was provided by MLS-CR.

244. Upon enquiry with the Subsidiaries, particulars of the 6 Complaints are as follows:-

- (1) On 26 June 2020, a complaint was made by one Mr. Lo against KC for passing his case to external collection agency. Upon receiving the complaint, KC informed Mr. Lo that no further collecting actions would be taken after receiving information about Mr. Lo’s petition for bankruptcy. Case was closed;
- (2) On 6 July 2020, a complaint was made by Ms. Mak against KC for irresponsible handling of correspondence and contact information, resulting in late charge being incurred. The case was eventually disposed of by waiving the late charge of HK\$44. Remarks were also given to internal control to input client’s phone number in a proper field instead of the ‘remark’ section;
- (3) On 6 October 2020, a complaint was made by Mr. Wong Kwok Ho against KC for failing to acknowledge a repayment of HK\$9,000 made on 29 November 2019 and for demanding him repayment of principal and additional interest. As Mr. Wong admittedly did not provide early redemption request form, no follow-up action was required;
- (4) On 11 March 2021, a complaint was made by Mr. Tsang Kai Hong against KC for suspected unlawful debt collecting conduct. KC subsequently confirmed with Debt Collecting Agent who confirmed that no debt collection had been undertaken;
- (5) On 26 May 2021, a complaint was made by Ms. Cheung Tze Yu against KC for disclosing her loan with KC during a checking call at Ms. Cheung’s office phone number. Follow-up action has been done by checking with telephone record and it was confirmed that the name of KC was not mentioned in the phone call. No further

request was made by Ms. Cheung, and KC also created a reminder to all frontline staff not to indicate the name of KC when conducting reference check;

- (6) On 26 July 2021, a complaint was made by Mr. Ng Chung Hon Alan against KC for permitting Debt Collecting Agent to make telephone calls to his company's phone number. Police was also reported. Follow-up action was taken by instructing the Debt Collecting Agent to suspend debt collection and case was closed.

245. In my view, none of the 6 Complaints provides any clear indication that the Subsidiaries have been in breach of the CR Guidelines or the Licensing Conditions, and in any event if there was any breach of the Licensing Conditions the same had been purged by the follow-up actions taken by the Subsidiaries.

246. In the premises, I am satisfied that the Subsidiaries have been in due compliance of CR's Guidelines during the Relevant Period.

(26) Code of Money Lending Practice issued by Hong Kong Licensed Money Lenders Association Limited ("LMLA's Code")

Regulatory Regime

247. LMLA's Code is a non-statutory code issued on voluntary basis to be observed by members of Hong Kong Licensed Money Lenders Association Limited ("LMLA") in dealing with personal customers.

248. As confirmed by the Group, KC-Ex has been a member of LMLA since 1 November 2019 and is therefore bound by the LMLA's Code.⁷²

Complaints

249. As confirmed by LMLA, a total of 3 complaints were received against KC-Ex since it has become a member of LMLA, namely:-

⁷² As confirmed by LMLA by an email dated 18 July 2023, KC is not a member of LMLA and is therefore not bound by LMLA Code.

- (1) A complaint lodged by Kwong Kwok Ki on 30 August 2021;
- (2) A complaint by Lam Wing Chueng on 29 January 2022;
- (3) A complaint lodged by Lee Chui Yi on 21 December 2022.

250. In all the complaints above, it was the complainants' complaint that the debt collectors acting on behalf of KC-Ex had pursued debt collecting against them despite they had filed for bankruptcy in court. Upon receiving the complaints, KC-Ex has notified the debt collectors about the relevant bankruptcy orders and instructed them to put debt collecting on hold.

251. In my opinion, there is no concrete evidence from the complaints that KC-Ex has violated the Licensing Conditions. Further, I am of the view that KC-Ex has handled the complaints in accordance with the Licensing Conditions.

Compliance

252. As analyzed above, the Group has implemented various measures and procedures to ensure that the dealing with personal customers are in compliance with LMLA. These measures and procedures are enforced under the following guidelines:-

- (1) Code of Conduct;
- (2) Branch Development Department Handbook;
- (3) Customer Exploration Department Handbook;
- (4) Client Interactive Department Policies & Procedures;
- (5) PA Policies & Procedures.

253. With effect from 30 December 2022, the Subsidiaries' staff are also directed to, before entering into any agreement for loan, explain to intending borrowers about the total amount of interest payable as well as the new statutory limit of effective interest rate and the new threshold of extortionate rate.

254. In my opinion, the above measures are effective to ensure that the Subsidiaries are in compliance with the LMLA's Code in the operation of the Business.

255. In the premises, I am satisfied that the Subsidiaries have been in due compliance of LMLA's Code during the Relevant Period.

(27) Guideline on Prevention of Money Laundering issued by HKMA ("HKMA's PML Guideline")

Regulatory Regime

256. HKMA's PML Guideline was issued under section 7(3) of BO and applies to all banking and deposit taking activities in Hong Kong carried out by AIs.

Compliance

257. As analyzed above, the Group has taken appropriate steps to ensure that the operation of the Business complies with AML/CFT regulatory requirements. The measures taken are multi-faceted, including: (a) the issuing of various guidelines, policies and manuals to prevent act of money laundering on different aspects and to provide guidance of how to lawfully handle the situations in case of suspicion; (b) the offering of training and post-training tests to ensure that the directors, officers, employees and Intermediaries are up to the requisite standards; (c) the establishment of departments and committees to ensure compliance of AML/CFT requirements on different levels and aspects; (d) the conduct of review by independent professional body on the design and operation of AML/CFT programs; and (e) the implementation of AML/CFT requirements in their contracts with agents.

258. In my opinion, the above measures are effective to ensure that the Subsidiaries are in compliance with the HKMA's PML Guideline in the operation of the Business.

(28) Guideline on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for Licensed Money Lenders ("RML Guideline")

259. The RML Guideline was issued by ML Registrar to provide guidance to licensed money lenders for implementation of effective measures to mitigate risks of money laundering and terrorists financing ("ML/TF"). The RML Guideline is promulgated by reference to

requirements set out in AMLO. Any non-compliance of RML Guideline may cast doubt on whether a licensee is fit and proper to carry on the business as money lender and whether its officers are fit and proper to be associated with the business of money lending.

260. The RML Guideline sets out certain major obligations of licensed money lenders, including:-

- (1) Duty to take reasonable measures to mitigate risk of ML/TF (by assessing the risk of their business) and to ensure that AML/CTF requirements under AMLO are complied with (by developing and implementing policies, procedures and controls);
- (2) Duty to establish and implement adequate and appropriate AML/CTF system (taking into account factors including product or service offered, type of customers and locations);
- (3) Duty to identify, assess and take effective actions to mitigate their ML/TF risks by adopting risk-based approach (greatest risks receive highest attention);
- (4) Duty to keep records and relevant documents of risks assessment so that they can demonstrate to the ML Registrar: (a) how customers' ML/TF risks are assessed; (b) the extent of customers' due diligence ("CDD") and ongoing monitoring is appropriate based on the customers' ML/TF risks;
- (5) Depending on circumstances, duty to conduct additional measures (enhanced customers' due diligence or simplified customers' due diligence);
- (6) Duty to complete CDD procedures before establishing any business relationship or before carrying out transaction. If unable to complete CDD procedures, duty to assess whether the failure provides grounds for knowledge or suspicion of ML/TF and filing suspicious transaction report;
- (7) Duty to continuously monitor business relationship with customers: by (a) reviewing document, data, information relating to customers from time to time; (b) conducting appropriate scrutiny of transaction to ensure that they are consistent with licensee's knowledge; (c) identifying transactions which are complex, of large amount, of unusual pattern or of no apparent economic or lawful purpose;
- (8) Duty to report the transaction to authorized officer once it identifies or suspects that a transaction is relating to ML/TF;

- (9) Duty to maintain all records of customers, transactions, that are necessary and sufficient to meet record-keeping requirements under AMLO and other regulatory regimes;
- (10) Duty to implement well-designed AML/CTF systems among staff.

261. In carrying out CDD, the RML Guideline specifies the following procedures:-

- (1) Identify the customer and verify his identity using reliable documents or data;
- (2) Identify and take reasonable measures to verify beneficial owner (if any);
- (3) Obtain information on purpose and intended nature of business relationship established with the licensee;
- (4) If a person purports to act on behalf of a customer, (a) identify the person and take reasonable measure to identify his identity; (b) verify his authority to act on behalf of the customer.

262. By reason of my analysis above, it is my opinion that the Subsidiaries are in compliance with RML Guideline in the operation of the Business.

(29) Other legal issues arising

Anti-Competition Practice

263. Apart from the legal issues arising above, it is also pertinent to note that under the Competition Ordinance (Cap.619) (“CPTO”), three types of anti-competition practices are prohibited, namely:-

- (1) Undertaking which makes or gives effect to an agreement (horizontal or vertical) with the object or effect of harming competition in Hong Kong (“**First Conduct Rule**”). The rule applies to concerted practices of associations of undertakings (whether participants are competitors or not), e.g. horizontal ‘cartel’ agreements, joint ventures, price fixing and group boycotts;
- (2) Business with substantial market power abuses the power by engaging in conduct

which harms competition in Hong Kong (i.e. to protect or increase position of power and profits) (“**Second Conduct Rule**”), e.g. predatory pricing, anti-competitive tying and bundling; margin squeeze and refusals to deal, as well as exclusive dealing;

- (3) Mergers which substantially lessen competition in Hong Kong (“**Merger Rule**”). Currently the application of the rule is limited to mergers relating to undertakings directly or indirectly holding carrier licences issued under the Telecommunication Ordinance (Cap. 106). The Merger Rule is inapplicable to the Subsidiaries.

264. Under CPTO, the Competition Tribunal is empowered to impose pecuniary penalties, award damages and order interim injunctions during investigations or proceedings for violation of competition rules. Parties to a contract may also invoke the rules to support their claim that a contractual clause is void or voidable.

Compliance by Subsidiaries

265. I have reviewed the documents and information provided by the Group and I am not aware that the Subsidiaries have entered into any agreement or abused its power in harming competition in Hong Kong, thereby offending the First or the Second Conduct Rules.

266. In the premises, I am satisfied that the Subsidiaries should be in compliance with the provisions of CPTO.

(5) Corporate Matters

Incorporation

267. I have reviewed the documents and information provided by the Group. In my opinion, the Subsidiaries have been duly incorporated under CO and are validly existing. The memorandum and articles of associations of the Subsidiaries (and their subsequent amendments) have been duly adopted and comply with the requirements of the provisions of CO.

268. Each of the Subsidiaries have undergone 3 occasions of change of company names. The changes of name have all been properly registered and are valid.

Legality of Status

269. During the Relevant Period, the Subsidiaries have complied with all filing requirements, including minutes relating to general corporate secretarial matters, in accordance with CO.

270. The Subsidiaries are capable of bringing legal proceedings, or having legal proceedings brought against them under the laws of Hong Kong. They have power and authority to conduct the operation of the Business. Their scope and the mode of Business operations are in accordance with laws of Hong Kong and constitutional documents of the Subsidiaries.

Shares Capital

271. Having considered the documents and information provided by the Group, I am of the view that the authorized share capitals and paid-up share capitals of the Subsidiaries are valid. The allotment, issuance and transfer of the Subsidiaries' shares are also valid and duly completed under laws of Hong Kong.

Corporate Management

272. Insofar as the appointment of directors, secretaries and auditors of the Subsidiaries during the Relevant Period are concerned, I am also of the opinion that they are valid having regard to the documents and information provided by the Group.

(6) Pending Claims, Proceedings, etc.

Outstanding Claims

273. Based on the result of the background and litigation search and as confirm by the Group, the following claims arising during the Relevant Period are currently outstanding against the Subsidiaries:-

- (1) SCTC 11849/2021 instituted on 31 March 2021, where Mr. Yeung Tak Chiu claims against KC-Ex (under its former name Konew Financial Express Limited) for over-charged payment of HK\$921.80;
- (2) SCTC 33761/2021 instituted on 17 September 2021, where Secretary for Justice (on behalf of Commissioner of Rating and Valuation) claims against KC-Ex (under its former name Konew Financial Express Limited) for arrears of rates and surcharges in respect of a property in which one Mr. Li Pak Chong is the mortgagor in the sum of HK\$3,285.70;
- (3) SCTC 24682/2022 instituted on 25 August 2022, where Secretary for Justice (on behalf of Commissioner of Rating and Valuation) claims against KC-Ex (under its former name Konew Financial Express Limited) for arrears of rates and surcharges in respect of a property in which one Mr. Li Pak Chong is the mortgagor, in the sum of HK\$673;
- (4) SCTC 13580/2023 instituted on 24 April 2023, where Secretary for Justice (on behalf of Commissioner of Rating and Valuation) claims against KC-Ex (under its former name Konew Financial Express Limited) for arrears of rates, government rent and surcharges in respect of a property in which one Lin Mei Feng May is the mortgagor, in the sum of HK\$874.80.

274. The amount involved in the above outstanding claims are relatively small, and the total aggregate sum of all outstanding claims does not exceed HK\$10,000. These claims are also all initiated in the Small Claims Tribunal to which lawyers have no right of audience. The implication of legal costs should be relatively negligible. In my view, these claims should not affect the propriety of the Subsidiaries and their directors in the Proposed Listing.

Potential Claims

275. The Subsidiaries also have the following potential claims against third parties during the Relevant Period:-

- (1) Return of project bonus in the sum of HK\$112,200 by KC-Ex (under its former name Konew Financial Express Limited) against its former employee. Demand letter has been issued on 23 December 2021 although no legal action has since been commenced;
- (2) Damages for breach of contract by KC against one 100 Enterprises International Group Co., Limited (“**100 Enterprises**”). 100 Enterprises also indicated a potential counterclaim for return of participation fee in the sum of HK\$50,000 and damages for loss of profits. Demand letter has been issued on 15 September 2022 although no legal action has since been commenced by either party.

276. The above potential claims are claims made by the Subsidiaries (and not against them). Save and except the potential counterclaim by 100 Enterprises against KC (of which the liquidated claim is only in the sum of HK\$50,000), the worst possible implication brought by these potential claims against the Subsidiaries is costs only; and is foreseeable and would not substantially affect the propriety of the Subsidiaries and their directors in the Proposed Listing. It is also likely that some or all of the above potential claims will be initiated in the Small Claims Tribunal⁷³ and thus the implication of legal costs towards the Subsidiaries can be kept to minimal.

Due Diligence

277. Litigation searches (“**Searches**”) have been conducted by Refinitiv, a third party search agent, on the Subsidiaries and their directors and company secretary, namely, (a) SS Lee, (b) PT Lee and (c) KT Lee. On the basis of and subject to the matters stated as follows, I am satisfied that the Searches revealed no actual claim, civil and/or criminal proceedings litigation, prosecution and/or winding-up petitions brought by or against the Subsidiaries and/or their directors and company secretary during the Relevant Period, save for the outstanding and potential claims mentioned in this section:-

⁷³ The current monetary jurisdiction of the Small Claims Tribunal is HK\$75,000. For claims exceeding the monetary jurisdiction of the tribunal (e.g. the claim by KC-Ex against its former employee for return of project bonus), the claimant may waive part of the claim so that the claim can fall within the jurisdiction of the Small Claims Tribunal.

- (1) The money lenders' actions brought by the Subsidiaries of which the 'Cause' was commonly described as 'money lenders action', 'mortgage action' or 'debt'. These actions are in the ordinary course of the Business and can be disregarded for the purpose of this section;
- (2) The legal actions of which the 'Cause' was described as 'Land'. These actions are confirmed as actions relating to the ordinary course of the Subsidiaries' Business and can be disregarded for the purpose of this section;
- (3) The legal action of which the 'Cause' was described as 'Trust'.⁷⁴ This action was an ex-parte application by KC-Ex for leave to make payment into Court the sale proceeds of the sale of a mortgaged property of a loan advanced by KC-Ex. It is confirmed that the action is in the ordinary course of the Business and can be disregarded for the purpose of this section;
- (4) The criminal and civil actions against person(s) bearing the same name as KT Lee,⁷⁵ which are confirmed to be unrelated to KT Lee and can be disregarded for the purpose of this section.

278. The Group confirmed that none of the Subsidiaries (or their directors, officers, employees, agents or shareholders) and their Intermediaries have been involved in any allegations, negative news, regulatory investigations or legal proceedings with respect to breach of any laws or regulations enforceable in Hong Kong (including those on anti-bribery and corruption, anti-money laundering, anti-terrorist financing activities, export control, economic sanctions and securities/insider dealings).

279. The legal department of the Group also confirmed that it was not aware, to the best of its knowledge, of the following matters:-

- (1) Any penalties being received from the government authorities in relation to the properties leased by them during the Relevant Period;

⁷⁴ HCMP 96/2022.

⁷⁵ ESCC 182/2021, HCMP 1429/2022 & HCB 3656/2010.

- (2) Any unauthorized use, or infringement by third party, of the intellectual property rights or the brand name of the Subsidiaries;
- (3) Any unauthorized use or infringement of the intellectual property rights or brand name of any third party by the Subsidiaries.

280. Based on the results of the Searches and confirmations by the Subsidiaries, save for the outstanding claims and potential claims mentioned in this section, there is no actual claim, judgment, order, pending government, civil and/or criminal legal proceedings, litigation, prosecution, winding up petitions or other insolvency processes, arbitral or disciplinary proceedings brought by or against each of the Subsidiaries during the Relevant Period.

(7) Reorganization

281. On 24 March 2023, KFCL transferred one share of KC-BVI to the Listing Entity at par value US\$1.00 pursuant to an instrument of transfer executed between KFCL and the Listing Entity (“**Reorganization Transfer**”). The transfer was also registered in the Register of Members. Insofar as the laws of Hong Kong is concerned, the Reorganization Transfer was duly approved by a directors’ unanimous written resolution of KC-BVI.

282. Insofar as the Subsidiaries are concerned, the reorganization is legally completed in accordance with the applicable laws and regulations in Hong Kong.

(8) Loan Agreements

283. Templates of the loan agreements have been provided to me by the Group. I am of the view that those loan agreements contain all necessary information as required by, and are enforceable under, the applicable laws, rules and regulations of Hong Kong (including the CMLP and sections 18(1), 18(2), 21, 22 and 27 of MLO) and are in compliance thereto.

(9) Regulatory Overview

284. In accordance with paragraph 9 of the Instructions, a draft of the summary of Hong Kong laws and regulations headed ‘Regulatory Overview’ is enclosed to this Legal Opinion as ‘Annex 1’.

(10) ‘Buy Now, Pay Later’ & Loan Participation Schemes

‘Buy Now, Pay Later’ (i.e. “BNPL”)

285. In general, BNPL products have similar features as instalment payment plans (“IPP”), which entail payment by instalments for purchase of goods or services, and are often marketed to customers as “interest-free”. Repayment period of BNPL products is usually shorter than that of IPP products (i.e. around a few months). If a consumer repays on time, there is usually no need for the customer to pay extra charge. Otherwise, the customer would have to pay a fee or charge (often in a fixed amount and less costly than that of IPP). For avoidance of doubt, products which are riding conventional credit card IPP are not considered as BNPL products, and will continue to be subject to pre-existing applicable consumer protection requirements.
286. As BNPL is a relatively new concept and technology introduced to Hong Kong, regulations were introduced sporadically to support the rapid growth of BNPL in the past year. Several governmental authorities have developed guidance to strengthen consumer protection regarding bank’s innovative consumer finance products, especially BNPL products, reflecting the attention brought to governmental bodies. In September 2022, HKMA released the “Guidelines of Enhancing Consumer Protection in Respect of BNPL Products”. Moreover, governmental authorities have released public educational posts and announcements of guiding healthy and orderly development of BNPL services. To further improve regulation coverage, governmental authorities are expected to consult the banking industry on the detailed guidance in the near future.
287. At the moment, the focus of regulatory scheme on BNPL products is mainly on consumer protection, in particular, on: (a) whether customers understand the nature of the BNPL products; and (b) the implication of BNPL products on impulsive borrowing and even over-borrowing by customers.⁷⁶ If AIs choose to use terms very similar to “(Action word) Now, Pay Later”⁷⁷ in the name and/or market or promote any credit product in such a way, given the connotation implied by “pay later” and the potential of customers

⁷⁶ HKMA’s circular on “Enhancing Consumer Protection in Respect of “Buy Now, Pay Later” Products” dated 2 September 2022.

⁷⁷ For example, “Buy Now, Pay Later”, “Spend Now, Pay Later” or “Enjoy First, Pay Later”.

considering such products as BNPL products, those products will be deemed as BNPL products and be subject to the regulatory regime, irrespective of the actual features of those products. The regulatory regime also extends to AIs which engage or partner with third-party service providers in launching the BNPL products, under which the AIs will be held responsible for the action of the third-party service providers.

288. There is no specific law regulating the offering of BNPL products or services. Regarding the ‘nature’ of BNPL products, since BNPL products entail lending by AIs to customers, they are considered by HKMA basically credit products. On this basis, AIs are required to follow consumer protection measures applicable to credit products, including:-

- (1) The Code of Banking Practice;
- (2) Treat Customers Fairly Charter (where applicable);
- (3) HKMA’s circular of 4 September 2020 on “Enhanced Disclosure Measures in respect of Digital Platforms for the Application of Unsecured Loan and Credit Card Products”
- (4) PD(P)O;
- (5) Code of Practice issued by PCPD on compliance with PD(P)O.

289. BNPL services can be applicable for various types of sales and commodities. For clarity purpose, if BNPL services are provided in the context of the making of a loan (such as the Business conducted by the Subsidiaries), the party who makes the loan is required to abide by the usual regulatory framework of a money lender (as analyzed above), including the obtaining of ML Licence.

290. Regarding implication of BNPL products on impulsive borrowing or over-borrowing, the following measures need to be adopted by AIs for provision (or engaging in the provision) of BNPL products:-

- (1) The inclusion of the educational message of “To borrow or not to borrow? Borrow only if you can repay!” (“借定唔借？還得到先好借！”） in the advertising and promotional materials of BNPL products;

- (2) AIs should ensure that all advertising and promotional materials are fair and reasonable, and do not contain misleading information. Specifically, advertising and promotional materials for BNPL products should not create an impression that no borrowing by the customer is involved;
- (3) AIs are required to disclose in marketing and promotional materials of BNPL products that it is a “credit product” (“信貸產品”). Such disclosure should be made in a clear and prominent manner, easily legible and/or clearly audible;
- (4) When AIs engage or partner with e-commerce platforms, AIs are encouraged to assess the potential implications on impulsive borrowing when considering whether the BNPL products are to be placed as the default or preferred choice of payment among other payment methods, in particular when payment options include direct payments from bank accounts or e-wallets;
- (5) AIs should ensure that the relevant fees and charges, as well as interest where applicable, should be indicated in a clear and prominent manner in the advertising and promotional materials of BNPL products.⁷⁸ If the BNPL product is marketed as “interest-free” in the advertising and promotional material, the existence of such fees and charges should be included in the same material;
- (6) AIs are required to add into the Key Facts Statement (“KFS”) of BNPL products that if a borrower does not fulfil the repayment obligations, it may adversely affect his/her credit records maintained at the credit reference agencies and consequently further access to credit in the future;
- (7) Customers using BNPL products should also be fully informed of applicability of chargeback mechanisms on their products. This is implemented through: (a) a new section on “Chargeback Mechanism” should be added in KFS of BNPL products;⁷⁹ (b) provision of basic information on the chargeback mechanism as above, as well as an application form to initiate any error/dispute resolution process, on AIs’ websites and principal Internet banking platforms; (c) for BNPL products not

⁷⁸ Where reference is made to an interest rate, relevant fees and charges should be taken into account in the calculation of annualized percentage rate.

⁷⁹ The information should specify: (a) whether a chargeback mechanism is available; and (b) basic information on the chargeback mechanism within reference to section 29.7 of the Code of Banking Practice where applicable. If chargeable mechanism is available, the section should also cover: (i) whether customers need to continue repayments after receiving refunds as a result of chargeback mechanism; (ii) whether any fee would be charged if a customer chooses to repay early after receiving refunds, and if so, the level of the fee.

subject to chargeback mechanism, AIs should follow the relevant risk management measures⁸⁰ and inform the customers that they will not enjoy chargeback protection and request them to confirm that they have read and understood the statement (e.g. by ensuring that they tick the box separately against each of the relevant clauses to confirm that they have read and understood the conditions) before proceeding to apply for the BNPL products.

291. Moreover, since approval of application of BNPL products is subject to credit assessment which should take into account applicants' ability to repay, AIs should also follow the requirements in Supervisory Policy Manual Module IC-6 "The Sharing and Use of Consumer Credit Data through Credit Reference Agencies" in the sharing and use of consumer credit data in connection with consumer credit products through credit reference agencies.

292. As stated in the early part of the legal opinion, the Subsidiaries' BNPL products will be provided through the platform PayKool. The nature of PayKool is one of personal loan. Upon purchasing a consumer product, the customer will have to pay by credit card (i.e. buy now), and the PayKool service will divide the payments into instalments⁸¹ under separated credit card bills (i.e. pay later). The service of PayKool will be available to any Hong Kong permanent resident who resides in Hong Kong and attains the age of 18.

Loan Participation Scheme (i.e. "LP Scheme")

293. The fundamental operation of the LP Scheme will be governed by the parties' obligations and rights under the Master Deed and D/T as stated in paragraph 23 above. In summary:-

- (1) KC shall deliver notification to Orix setting out details of each participation in respect of each credit agreement. Upon receiving the notification, Orix shall, in its absolute discretion, confirm to KC whether it wishes to participate by delivering to KC a signed participation ticket;

⁸⁰ Set out in HKMA's circular of 16 August 2010 on "Marketing through Third Parties of Instalment Payment Plans involving Pre-payment for Goods or Services", in particular paragraphs 6 to 8 thereof.

⁸¹ Number of instalments run from 3 months to 10 months, depending on the amount of each instalment.

- (2) If Orix confirms to participate, KC shall deliver to Orix a signed counterpart to the participation ticket;
- (3) In respect of each participation, Orix shall pay to KC on the participation effective date (applicable to each participation) the settlement amount, i.e. the amount in relation to the participation as set out in the participation ticket;
- (4) Meanwhile, KC shall open a 'collection account' with a bank (to which Orix shall have the signing rights and needs to provide all necessary assistance) for all payments in respect of or under the participated loans. KC shall be sole responsible for the safe keeping of all documents, property and assets delivered in connection with, as well as all fees and charges in relation to, the collection account;
- (5) KC shall allocate a certain amount to Orix to Orix's receiving account as if the payment is paid into the collection account;
- (6) KC shall also assign to Orix a portion of the loan applicable to the participation including the corresponding rights under the credit agreements and any related guarantee and/or indemnity (but Orix shall not be under any obligation in relation to the loans, and KC shall at all times remain liable to perform all obligations to be assumed in respect of the loans);
- (7) KC shall hold all participated assets (i.e. 70% of KC's rights, title and interest in the collection account and all related rights) on trust for the sole benefit and account of Orix, until it is discharged under the terms of D/T;
- (8) Upon triggering event (e.g. where KC fails to comply with its obligations, or is petitioned for winding-up, or makes incorrect or misleading representation, or is unable to pay its debts), KC shall upon Orix's request, deliver notice of assignment to each borrower to protect Orix's right and facilitate realization of loans. Upon taking possession of the participated assets, Orix may at any time relinquish possession.

294. Although the LP Scheme has not yet been put into operation, it would appear that for loan agreements (purportedly between KC and the individual borrowers) made in participation of the LP Scheme, Orix would become a *de facto* lender of certain portion of the loans thereunder (as Orix would have all the rights, title and interest of the particular portion of

the loan under the D/T). The followings are the major legal implications brought by the LP Scheme:-

- (1) It is highly arguable that Orix, by assuming all the rights, title and interest of the relevant portion of the participated loan, will be in the position of a money lender. In this regard, I am satisfied that Orix should have fulfilled the basic requirement of a money lender under MLO by having obtained a valid and subsisting ML Licence (ref. 1813/2022);
- (2) As a licensed money lender, Orix will be subject to the regulatory regime of money lenders in Hong Kong (including observation of the regulatory scheme under MLO and MLR, as well as other applicable code and guidelines issued by the authorities as stipulated above), even though under the LP Scheme it is not the lender under the participated loan agreements.

295. Since the LP Scheme has not come into operation at the date of the legal opinion, I am unable to opine on whether Orix ‘has complied’ with the relevant regulatory regime. It suffices to observe at this stage that the intended arrangement as demonstrated in the documents has not violated the regulatory scheme applicable in Hong Kong. There is also no reason to suspect that Orix would not abide by the relevant laws and regulations had the LP Scheme come into operation.

(11) Business Section

296. The information on non-compliance matters of the Group in relation to Hong Kong laws and regulations as set out in the proposed ‘Business’ section of the prospectus is an accurate description as far as the relevant non-compliance matters of the Group are concerned.

(12) Refinancing under Home Ownership Scheme

297. Under the Housing Ordinance (Cap.283), any mortgage, charge, assignment or alienation (together with an agreement so to do) of a property acquired under the Home Ownership Scheme (“**HOS Property**”) shall, in the absence of release of alienation restriction under the covenant in the deed of assignment of purchase (usually by way of payment of premium), be void. A lender or borrower who purports to create a mortgage of or charge

or otherwise alienate the HOS Property commits an offence and is liable to a fine of HK\$500,000 and to imprisonment for 1 year.

298. In order for an HOS Property to be mortgaged, charged or otherwise alienated, it is the common practice for its owner to apply to the Housing Department for assessment of the premium payable. Upon inspection of the HOS Property, the Housing Department would make a determination of the appropriate premium by the issuance of a Notice of Premium Assessment. The amount of premium as determined by the Housing Department under the said notice is subject to objection and appeal by the owner of the HOS Property if he is dissatisfied with the determination. Upon payment of the premium within a prescribed time, a Certificate of Removal of Alienation Restrictions would be issued by the Housing Department, and the owner of the HOS Property would be at liberty to mortgage, charge or otherwise alienate the HOS Property. In the meantime, one should note that the owner of the HOS Property should arrange his own finance for payment of the premium, as the HOS Property cannot be mortgaged or charged to finance the premium payment.

(13) Statements in Prospectus

299. Insofar as the same constitutes a summary of Hong Kong laws, the statements set forth in the following sections of the Prospectus correctly, accurately and truly summarize in all material respect of such laws:-

- (1) Risk factors;
- (2) Regulatory Overview;
- (3) Information about this prospectus and the Global Offering;
- (4) History and Development;
- (5) Business;
- (6) Directors and Senior Management;
- (7) Relationships with Controlling Shareholders;
- (8) Substantial Shareholders;
- (9) Connected Transactions;
- (10) Statutory and General Information;
- (11) Documents delivered to the Registrar of Companies and available for inspection.

(14) Intellectual Property Rights

General Concepts

300. Intellectual property rights are concepts acknowledging ownership of different types of intangible property rights associated with intellectual property. In Hong Kong, depending on the nature of the intellectual properties, these rights include: (a) trademark, (b) goodwill, (c) copyright, (d) patent and (e) right of confidence.

301. In the context of financial technologies (in particular, the development of IT applications and software), the intellectual property rights most commonly involved are:-

- (1) Copyright – It protects the expression of ideas (but not the ideas themselves). Under section 4(1) of the Copyright Ordinance (Cap.528), copyright of computer program is protected as literary works: *Nova Productions Ltd v Mazooma Games Ltd* [2007] EWCA Civ 219; *SAS Institute Inc v World Programming Ltd* [2011] RPC 1. In order to be protected, the literary must be original; there must be input of a minimum level of skill, judgment and labour on the part of the person making the work. The literary must also be recorded in writing or otherwise. Copyright arises automatically once the literary is created and does not depend on any registration (in fact there is no copyright registration system in Hong Kong). In Hong Kong, the author of the computer program (i.e. person by whom arrangements necessary for the creation of the work are undertaken) is the first owner of the copyright of the work. Copyright owner of a software enjoys protection against the source code being copied, but it does not prevent a third party from developing his own source code by copying the functionality.
- (2) Patent – It protects inventions which are new, with inventive steps and susceptible of industrial application. Although under section 9A(2)(c) of the Patent Ordinance (Cap.514) it is expressly stated that a computer program is non-patentable in Hong Kong (see also: *Wang Laboratories Inc's Application* [1991] RPC 463), one must note that the exclusion only applies when the claimed invention is nothing more than a computer program (i.e. a computer program ‘as such’). It is therefore crucial

to examine whether the invention is in substance a computer program 'as such' or something more than a computer program. The established approach is to consider the invention as a whole, instead of taking out the computer program and consider only the remainder. The mere fact that the invention contains a computer program is not determinative, the decisive factor is whether the invention makes any technical contribution to the known art: Genentech Inc's Patent [1989] RPC 147; Merrill Lynch's Application [1989] RPC 561 and IBM's Application [1999] RPC 861. In AT&T Knowledge Ventures LP's Patent Application [2009] EWHC 343 (Pat), it was suggested that, in assessing the technical contribution of an invention, five useful 'signposts' might be adopted, namely: (a) whether the claimed technical effect has a technical effect on a process which is carried on outside the computer; (b) whether the claimed technical effect operates at the level of the architecture of the computer; that is to say whether the effect is produced irrespective of the data being processed or the applications being run; (c) whether the claimed technical effect results in the computer being made to operate in a new way; (d) whether a program makes a computer a better computer in the sense of running more efficiently and effectively as a computer; and (e) whether the perceived problem is overcome by the claimed invention as opposed to being merely circumvented. The above authorities, however, have not been judicially examined by Hong Kong court. In Hong Kong, the right to patent an invention belongs to the inventor. Where the inventor is an employee, the right is determined by the law of the place where the employee was employed or (if such location cannot be ascertained) by the law of the employer's place of business. Once patent is granted, the technology will enjoy a maximum of 20 years of protection from the date of the filing of application. The protected patent can also be licensed during the protection period to generate profits.

- (3) Trademark – If the software contains a brand name or logo, they can be protected by way of trademark registration. Owner of registered trademark enjoys protection against the same being used in unauthorized manner. In Hong Kong, the Trade Marks Ordinance (Cap.559) ("TMO") regulates the registration and proceedings relating to infringement of trade marks in Hong Kong. Under TMO, a trademark is registrable unless it contravenes any of the grounds for refusal stated thereunder.

A registered trademark can be assigned or otherwise transmitted separately from the goodwill of a business.

- (4) Right of Confidence – If the software contains any trade secret, it can be protected pursuant to the right of confidence under common law. Trade secrets can be clients' data or analysis, secret formula, etc., provided that they contain commercial value and meet other requirements under the common law.

302. If certain financial technologies were developed by the Subsidiaries or the Group, they would enjoy the copyright by virtue of their role as the author(s). Subject to the criteria set out above, they may also be entitled to the right to register the patent and trademark as well as to exercise the right of confidence over them.

KC's Trademarks

303. During the Relevant Period, Trademark registration no. 304048623 held by KC is the only trademark owned by the Subsidiaries which has been registered in Hong Kong.

304. In my opinion, the above trademark has been duly registered in Hong Kong under the name of KC.

Fintech Technology

305. The fintech systems or applications deployed in the Business by the Subsidiaries during the Relevant Period (e.g. IDCM, VTM, RPA) were either: (a) provided by third parties or (b) developed by the Group's fintech team. As confirmed by the Group:-

- (1) For fintech systems or applications provided by third parties, the Subsidiaries do not own any intellectual property rights save for the right to use and upgrade those financial technologies;

- (2) For fintech systems or applications developed by the Group's fintech team, the Group owns copyright as the first owner of the literary work⁸² (which arose as soon as the application or software was created⁸³) and the right to use the fintech system or application's functions as it developed the source code independently.

BC Platform

306. By a Service Agreement dated 16 December 2019 entered into between MoneySQ and Konew Credit ("**MSQ Agreement**") (modified by an Addendum dated 15 June 2020), MoneySQ agreed to provide, inter alia, blockchain service through 'trustME' platform which allowed Konew Credit to develop its own blockchain applications via a set of interface.
307. The MSQ Agreement was terminated by mutual agreement on 15 June 2022 ("**MSQ Termination**"). Apart from termination of the parties' rights and obligations under the MSQ Agreement, the parties further reached agreement on the disposal of any joint right stipulated under Clause 5.1 of the MSQ Agreement in the following terms. In effect, any joint right arising from the intellectual property developed by both parties would, since the MSQ Termination, be vested with Konew Credit solely.
308. I have also been confirmed by the Group that upon the MSQ Termination, Konew Credit has become the sole owner of the intellectual property right of the blockchain platform developed, i.e. BC Platform.
309. Whilst my opinions in this legal opinion should only be confined to the compliance of the Subsidiaries during the Relevant Period, insofar as it can be relevant, whether Konew Credit is the rightful owner of the BC Platform depends on whether the MSQ Termination is legally valid and enforceable. In my opinion, the answer is in the affirmative:-

⁸² See: Section 4(1)(b), Copyright Ordinance (Cap. 528), in which the words "literary work" includes "computer program". See also: *Cantor Fitzgerald International v Tradition (UK) Ltd* [2000] RPC 95, *IBCOS Computers Ltd v Barclays Mercantile Highland Finance Ltd* [1994] FSR 275 and *Apple Computer Inc & Anor v Computer Edge Pty Ltd & Suss* [1984] FSR 481.

⁸³ Sections 11, 13 & 14, Copyright Ordinance (Cap. 528).

- (1) A joint ownership (if there exists any) can be terminated by severance. The MSQ Termination is a sufficient act of severance in equity in that: (a) it represents an active disposition of share; (b) it is a mutual agreement to terminate any joint ownership;⁸⁴
- (2) Upon severance, the MSQ Termination is effective in conveying any of the severed share of ownership (as ownership-in-common) to Konew Credit. Further, the MSQ Termination is supported by consideration that Konew Credit agreed to release MoneySQ from its obligations under the MSQ Agreement.

Enquiries

310. The Subsidiaries have written to C&E making enquiry as to whether they had been in non-compliance of TMO since their incorporation. In reply, C&E stated that there was no conviction record against the Subsidiaries under its purview up to 13 July 2023.

311. In the premises, I am satisfied that the Subsidiaries have been in due compliance of the provisions of TMO during the Relevant Period.

CONCLUSION

312. I trust that the above has dealt with all the matters raised for my legal opinion, and I advise accordingly.

Dated this 27th day of November 2023.



MATTHEW HO

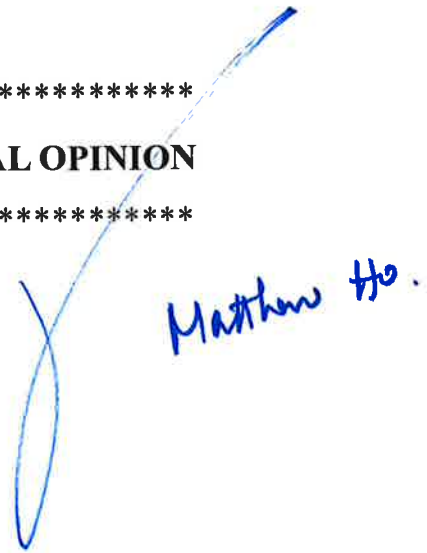
Sir Oswald Cheung's Chambers

Hong Kong

⁸⁴ See: *Ng Chi Fong v Hui Ho Pui Fun* [1987] HKLR 462 at 469; *Hewett v Hallett* [1894] 1 Ch 362 (Ch D); *Nihan v Porter* [1969] 1 Ch 486; *Barton v Morris* [1985] 1 WLR 1257 (Ch D).

PROJECT PROSPERITY

LEGAL OPINION



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