

## CHAPTER 5

### REVOCATION AND SUSPENSION OF AUTHORIZATION

#### Introduction

- 5.1 Under section 22 of the Ordinance, the MA may revoke the authorization of an authorized institution on any one or more of the grounds specified in the [Eighth Schedule](#) (“the Schedule”).
- 5.2 There are a number of steps which must be gone through before a revocation takes effect. Under section 22(1), the MA may propose to revoke an authorization by serving notice in writing to that effect on the authorized institution concerned after consultation with the Financial Secretary. Before doing so, the MA must, under section 23(1), have informed the institution of the grounds for the proposed revocation and have given it an opportunity of being heard (unless the revocation is requested by the authorized institution concerned).
- 5.3 An institution which is aggrieved by a proposed revocation may appeal against it to the Chief Executive in Council under section 132A(2). Only when these appeal procedures are exhausted or the institution has waived its right of appeal would the MA specify by notice in writing to the authorized institution the date on which the proposed revocation shall take effect. From that date, the institution must cease to carry on the business which was the subject of its authorization. After serving the notice of revocation, the MA would make a public announcement of the revocation.
- 5.4 The MA’s powers of revocation under section 22 are discretionary. Even if the powers to revoke become exercisable, the MA may choose not to exercise them if he considers that remedial action can be speedily taken by the institution concerned which would resolve the problem in a satisfactory manner. However, where such remedial action is not forthcoming, revocation of the institution’s authorization may follow. In considering whether to take such a step, the MA would have primary regard to the need to maintain the stability of the banking system, and to protect the interests of depositors and potential depositors of the institution.
- 5.5 A description of each of the grounds for revocation in the Schedule and the MA’s interpretation of them is set out below. The paragraph references are to those in the Schedule. In a number of places, the paragraphs in the Schedule cross-refer to statutory provisions in the Ordinance, a breach of which would be a ground for revocation. Such breaches may also give rise to criminal offences in respect of which specific penalties are laid down in the Ordinance. The decision on whether to prosecute such offences is a matter for the Secretary for Justice. It should be noted that the MA may decide to revoke the authorization of an institution which has breached a provision of the Ordinance specified in the Schedule even if the Secretary for Justice decides not to prosecute in respect of that breach.

### **Paragraph 2 - criteria for authorization in the Seventh Schedule no longer satisfied**

- 5.6 As noted in Chapter 4, the criteria for authorization set out in the [Seventh Schedule](#) are continuing requirements which continue to apply after an institution has been authorized. Accordingly, Paragraph 2 of the [Eighth Schedule](#) provides that it is a ground for revocation if the MA is satisfied that if the authorized institution concerned were not presently authorized and were to make an application for authorization, section 16(2) of the Ordinance would prohibit him from authorizing it. This would be because the institution concerned no longer satisfied one or more of the criteria set out in the [Seventh Schedule](#).
- 5.7 Paragraph 2 excludes from its scope the criteria specified in Paragraphs 2(b) and 13 of the [Seventh Schedule](#). These relate respectively to adequacy of home supervision and other criteria such as reciprocity. It would not therefore be grounds for revocation under Paragraph 2 if these criteria were no longer satisfied with respect to an authorized institution.

### **Paragraph 3 - insolvency or winding up of the authorized institution**

#### **Paragraph 4 - actual or prospective inability of the authorized institution to meet its obligations**

- 5.8 These Paragraphs are largely self-explanatory. Under section 67 of the Ordinance, authorized institutions have a duty to report to the MA a prospective inability to meet obligations. The winding-up of authorized institutions is dealt with in section 122. As with the other grounds specified in the Schedule, the MA's power to revoke under Paragraphs 3 and 4 is discretionary. Even if the institution concerned is in the process of being wound up, the MA may not immediately move to revoke its authorization. Rather, he would consider whether retention of authorization would achieve any of his statutory objectives. For example, he would consider if it would assist the liquidator in the performance of his functions and thus be in the interests of any remaining depositors of the institution or the stability of the banking sector.

#### **Paragraph 5 - failure by the authorized institution to provide the MA with information of a material nature**

#### **Paragraph 6 - provision of information by the authorized institution to the MA which is materially false, misleading or inaccurate**

- 5.9 Paragraph 5 provides that the MA's powers to revoke become exercisable if he is satisfied that the authorized institution has not provided him, before or after authorization, with information of a material nature relating to it as is required under the Ordinance. Paragraph 6 refers to a situation where the MA is satisfied that the institution has provided him, before or after authorization, with information which is, to a material extent, false, misleading or inaccurate. This applies whether or not the information was provided pursuant to a requirement under the Ordinance.

- 5.10 Failure to provide the MA with material information as required under the Ordinance or the FIRO could indicate weaknesses in the management and/or internal controls of the authorized institution. It may cast doubt on whether the institution is being prudently managed and on the attitude of its management towards regulatory compliance. In determining whether or not to exercise his power of revocation on this ground, the MA would have regard to such factors as the nature of the information concerned, the frequency of the failure to provide information, whether effective measures had been implemented to rectify the situation, and whether there were other mitigating factors in the circumstances.
- 5.11 The MA considers that the provision of false, misleading or inaccurate information of a material nature by an authorized institution would be a serious matter as it would raise significant doubt not only as to the effectiveness of the institution's internal control systems but also, perhaps, as to the basic integrity of its management and the general attitude of the management towards regulatory compliance. Such a situation could pose a serious threat to the interests of depositors or potential depositors of the institution. The MA would not however contemplate exercising his powers in the case of a minor inaccuracy. Rather, he would take account of such factors as the materiality of the information and of the inaccuracy, the frequency with which such inaccuracies occurred, whether there was a deliberate intent to deceive the MA, whether effective measures had been implemented to rectify the situation and whether there were other mitigating factors in the circumstances.

**Paragraph 7 - contravention of any condition attached to an authorization**

- 5.12 As noted in Chapter 4, the MA has the power under section 16 of the Ordinance to attach conditions to the authorization of an authorized institution. Paragraph 7 provides that the MA may exercise his powers of revocation where he is satisfied that an institution has breached such a condition. In considering whether to exercise his powers, the MA would take account of the particular circumstances of the breach (including how serious it was, whether it was deliberate and how often it had been repeated) and any remedial action which had been taken to prevent a recurrence.

**Paragraph 8 - cessation of banking business or a business of taking deposits**

**Paragraph 9 - the objects of the authorized institution no longer include carrying on banking business or a business of taking deposits**

- 5.13 Under these Paragraphs the MA may revoke an authorization if the institution concerned is no longer carrying on the business which was the subject of its authorization, or if its objects as stated in its memorandum and articles of association no longer include the carrying on of such business. The intention of Paragraph 9 is to ensure that the carrying on of banking business or the business of taking deposits would not be *ultra vires* the objectives of an authorized institution. Under section 15 of the Ordinance, an applicant for authorization is required to lodge a copy of its memorandum and articles of association (or other similar document) with the MA on submitting the application. Under section 65 of the Ordinance, an authorized

institution is required to notify the MA in writing of any change in the memorandum and articles of association within 30 days after the making of the alteration.

- 5.14 If an authorized institution has ceased to carry on banking business or a business of taking deposits, it is required under section 66 of the Ordinance to notify the MA in writing of that fact. In considering whether to exercise his power of revocation under Paragraph 8, the MA would take account of the particular circumstances of the cessation (including whether it was temporary or permanent) and whether there were any reasons why the authorization should be retained.

**Paragraph 10 - failure by the authorized institution to pay fees**

- 5.15 Under section 19 of the Ordinance, authorized institutions are required to pay various fees specified in the [Second Schedule](#). Under Paragraph 10, the MA may revoke the authorization of an institution if he is satisfied that the institution concerned has failed to pay any such fee after being advised in writing by the MA that it is contravening section 19. In considering whether to exercise his powers of revocation, the MA would take account of the particular circumstances of the failure to pay and any remedial action which had been taken to prevent a recurrence.

**Paragraph 11 - failure by the authorized institution to comply with a requirement relating to publication of audited annual accounts**

- 5.16 Under section 60 of the Ordinance, authorized institutions are subject to various requirements relating to the lodging of their audited annual accounts and other information with the MA and the display of such information in the principal place of business in Hong Kong and in each local branch. Under Paragraph 11, the MA may revoke the authorization of an institution if he is satisfied that it has failed to comply with any requirement under section 60 after being advised in writing by the MA that it is contravening that section. In considering whether to exercise his powers of revocation, the MA would take account of the particular circumstances of the failure to comply and any remedial action which had been taken to prevent a recurrence.

**Paragraph 12 - taking of deposits by deposit-taking companies (DTCs) or restricted licence banks (RLBs) of less than the specified sum**

- 5.17 Under section 14(1) of the Ordinance, DTCs and RLBs are not allowed to take deposits of a sum less than the amount specified in items 2 and 3 respectively of the [First Schedule](#). These sums are currently set at HK\$100,000 in the case of DTCs and HK\$500,000 in the case of RLBs. Under section 14(3) of the Ordinance, DTCs or RLBs are not allowed to let the amount of the balance standing to the credit of a depositor be less than the specified sum.
- 5.18 Under Paragraph 12, the MA may revoke the authorization of a DTC or RLB if it has breached section 14(1) or (3). In considering whether to exercise his powers of revocation, the MA would take account of the particular circumstances of the breach

(including how serious it was, whether it was deliberate and how often it had been repeated) and any remedial action which had been taken to prevent a recurrence.

**Paragraph 13 - person has become a controller of an authorized institution despite the MA's objection**

**Paragraph 14 - person continues to be a controller of an authorized institution despite the MA's objection**

- 5.19 Under section 70(6) of the Ordinance, the MA may serve a notice of objection on a person applying to become a controller of an authorized institution incorporated in Hong Kong. He will generally do this if, for example, he is not satisfied that the person is fit and proper to be a controller of the institution concerned. Under section 70A and, in certain circumstances, under section 70(6) the MA may also issue a notice of objection in respect of an existing controller (for example, on the grounds that the MA considers that the controller is no longer fit and proper).
- 5.20 If a person continues to remain a shareholder controller of an authorized institution despite the MA's objection, section 70B of the Ordinance allows the MA to impose certain restrictions on the shares in question and to apply to the Court of First Instance for an order for the shares to be sold. In addition to this action which can be taken in relation to the controller, Paragraphs 13 and 14 would allow the MA to revoke the authorization of the institution concerned where a person had become a controller despite being served with a notice of objection under section 70 or had continued to be a controller despite being served with a notice of objection under section 70 or 70A.
- 5.21 The MA would not take such action against the institution concerned until the controller in respect of whom the notice of objection had been issued had exhausted all the appeal procedures to the Chief Executive in Council available to him under section 132A(1). The MA would also consider whether the measures available to the MA under section 70B of the Ordinance would be sufficient to deal with any threat to depositors and potential depositors of the institution arising from the association of the controller with the institution. The closeness of the links between the institution and the controller (including the size of the latter's shareholding) would also be a relevant factor.

**Paragraph 15 - person has become or continues to be a chief executive or director of the authorized institution without the MA's consent or is in breach of any condition attached to the MA's consent**

**Paragraph 16 - the authorized institution fails to appoint a chief executive**

- 5.22 Under section 71 of the Ordinance the directors and chief executives (including their alternates) of authorized institutions incorporated in Hong Kong require the MA's approval prior to taking up their appointment, as do the chief executives of the business in Hong Kong of institutions incorporated outside Hong Kong. The MA may

also withdraw his approval if, for example, he is no longer satisfied that the person is fit and proper for the position that he holds. Section 74 of the Ordinance requires every authorized institution to appoint a chief executive and not less than one alternate chief executive (in the case of an authorized institution incorporated outside Hong Kong the requirement is in respect of the business in Hong Kong).

- 5.23 Under Paragraph 15, the MA may revoke the authorization of an institution where a person has become or continues to be a chief executive or director in contravention of section 71, i.e. without the approval of the MA or that approval having been withdrawn. The MA would only exercise this power after the person concerned had exhausted all the appeal procedures to the Chief Executive in Council available to him under section 132A(1) regarding the MA's refusal to grant approval or withdrawal of approval. The MA would not exercise his power to revoke simply in respect of an unintentional and brief breach of section 71. Nor would he do so in relation to an unintentional and brief breach of section 74.

**Paragraph 15A - person has become or continues to be an executive officer of the authorized institution without the MA's consent or is in breach of any condition attached to the MA's consent**

- 5.24 Under section 71C of the Ordinance, the executive officers of authorized institutions that are registered with the SFC require the MA's consent before they hold their positions. The MA may withdraw or suspend such consent if he is no longer satisfied that the person is fit and proper or has sufficient authority within the institution to be an executive officer. The MA is also empowered to attach conditions to the consent.
- 5.25 Under Paragraph 15A, the MA may revoke the authorization of an institution where a person has become or continues to be an executive officer in contravention of section 71C, i.e. without the consent of the MA, after the MA's consent has been withdrawn, or in breach of a condition attached to the MA's consent. The MA would only exercise this power after the person has exhausted all the appeal procedures to the Securities and Futures Appeals Tribunal available to him under section 132A(6) regarding the MA's decision under section 71C. The MA would not exercise this revocation power simply in respect of an unintentional and brief breach of section 71C.

**Paragraph 17 - the authorized institution engages in prohibited business practices**

- 5.26 Under section 82(1) of the Ordinance, the MA may by notice in the Gazette publish guidelines specifying business practices which should not be engaged in by authorized institutions because, in his opinion, such business practices will or may cause the soundness of the financial position of authorized institutions to be dependent upon the soundness of the financial position of a single party. ("Single party" is capable of wide definition and may include any class or description of persons or business.)

- 5.27 Under Paragraph 17, the MA may revoke the authorization of an institution which engages in business practices specified in a notice under section 82(1). In considering whether to exercise his powers of revocation, the MA would take account of the particular circumstances of the breach (including how serious it was, whether it was deliberate and how often it had been repeated) and any remedial action which had been taken to prevent a recurrence.

#### **Paragraph 18 - any other threat to the interests of depositors**

- 5.28 Although the grounds for revocation specified in the Schedule cover most of the circumstances which could pose a threat to the interests of depositors or potential depositors, they do not cover all - for example, a sudden external threat, unconnected with the institution's conduct, such as a natural catastrophe, contagious effect of the global financial system or the imposition of restrictions by a government, such as a debt moratorium or currency restrictions. Paragraph 18 thus provides that the MA may exercise his power to revoke where he is satisfied that the interests of depositors or potential depositors are in any other manner threatened by the institution continuing to be authorized.

#### **Paragraph 19 - voluntary revocation by the authorized institution**

- 5.29 Under Paragraph 19, the MA may revoke the authorization of an institution where it makes such a request in writing and the MA is satisfied that the interests of depositors of the institution are or will be adequately safeguarded. The MA will generally seek to ensure that the interests of depositors are safeguarded by requiring the institution to repay all its deposits prior to the MA agreeing to the request for voluntary revocation. An auditor's certificate that there are no deposit liabilities outstanding will normally be required. In exceptional circumstances, the MA may use his powers under section 22(4) of the Ordinance to allow an institution to continue to hold deposit liabilities after revocation, for example where the relevant accounts are dormant and the depositors cannot be traced. Such consent may be subject to conditions relating to such matters as the period for which, and the manner in which, the deposits may be held.

#### **Paragraph 20 - threat to the interests of Hong Kong as an international financial centre**

- 5.30 Under Paragraph 20, the MA may revoke the authorization of an institution if he is satisfied that it is engaging in business practices which would be likely to prejudice the interests of Hong Kong as an international financial centre. This would apply to such practices as money laundering, terrorist financing or breach of United Nations sanctions, and the power would be exercisable even when the conduct in question did not pose any immediate threat to the interests of depositors or potential depositors of the institution.

**Paragraph 21 - failure by the authorized institution to comply with any requirement under the Deposit Protection Scheme Ordinance (DPSO)**

- 5.31 Under Paragraph 21, the MA may revoke the authorization of an institution if the authorized institution has failed to comply with any requirement under the DPSO applicable to the institution. This would include requirements such as those in relation to asset maintenance, payment of contributions, representations made by the institution on scheme membership and protection of financial products under the scheme, and the provision of information required under section 48 of the DPSO.

**Suspension**

- 5.32 Under section 25 of the Ordinance, where the MA's powers to revoke an authorization become exercisable, he may, after consultation with the Financial Secretary, by notice in writing suspend the authorization of the institution for a period not exceeding 6 months (which may be extended upon expiration for a period not exceeding 6 months). The effect of suspension is that the institution concerned must, from the date specified by the MA, cease to carry on the business which is the subject of its authorization. Before exercising his powers under section 25, the MA must first inform the authorized institution concerned of the grounds for the proposed suspension and give it the opportunity of being heard. If the MA decides to proceed with the suspension, the institution has the right to appeal to the Chief Executive in Council, but the suspension takes immediate effect from the date specified by the MA. After an institution has been suspended (but not before), the MA would publish a notice in the Gazette to that effect.
- 5.33 Suspension may be a step before revocation or it may provide an alternative to revocation. While preventing an authorized institution from carrying on banking business or the business of taking deposits, suspension allows the institution to retain its authorized status which may help in a restructuring or rescue operation, for example by making the institution more attractive to a would-be purchaser. It also means that the powers of the MA in relation to authorized institutions remain exercisable in respect of the institution.
- 5.34 As already noted, the power of suspension under section 25 cannot be exercised until the institution concerned has been given the opportunity of being heard. This could create problems if the institution continued to take deposits while the right to be heard was being exercised. Under section 24, therefore, the MA also has a power of temporary suspension whereby he may suspend the authorization of an institution for a period of not more than 14 days. In this case, it is at the MA's discretion whether the institution is given the opportunity of being heard prior to the suspension.
- 5.35 This power would only be used in urgent cases, after consultation with the Financial Secretary, where the MA considered that it was necessary to protect the interests of the institution's depositors or potential depositors. Alternatively, the Financial Secretary may advise the MA that he considers that it is in the public interest that urgent action be taken and that the MA's powers under section 24 should therefore be exercised.