CHAPTER 6

POWERS OF CONTROL OVER AUTHORIZED INSTITUTIONS

Introduction

6.1 Section 52 of the Ordinance gives the MA the power to take action in respect of authorized institutions which are in difficulties. This chapter sets out the powers which the MA may exercise, including the appointment of a Manager under section 52(1)(C) to assume control of an authorized institution.

6.2 The MA, after consultation with the Financial Secretary, may exercise his powers under section 52 where -

(a) an authorized institution informs the MA that it is likely to become unable to meet its obligations or that it is insolvent or about to suspend payment;

(b) an authorized institution becomes unable to meet its obligations or suspends payment;

(c) the MA is of the opinion that -

(i) an authorized institution is carrying on its business in a manner detrimental to the interests of its depositors or potential depositors; its creditors; or for a bank, the user or potential user of any stored value facility issued, or the issue of which is facilitated, by the bank under its SVF licence[1];

(ii) an authorized institution is insolvent or likely to become unable to meet its obligations or is about to suspend payment;

(iii) an authorized institution has contravened or failed to comply with any provisions of the Ordinance; or

(iv) an authorized institution has contravened or failed to comply with any condition attached under section 16 to its authorization or specified in certain provisions in the Ordinance; or

(v) his power under section 22(1) to propose to revoke the authorization of an authorized institution is exercisable.

(d) the Financial Secretary advises the MA that he considers that it is in the public interest to do so.

[1] For more details about a SVF licence, please refer to the information published in the HKMA website (https://www.hkma.gov.hk/eng/key-functions/international-financial-centre/stored-value-facilities-and-retail-payment-systems/regulatory-regime-for-stored-value-facilities/).

6.3 Where the MA's powers under section 52 become exercisable, he may take one or more of the following actions under that section -

(a) to require the institution, by notice in writing, to take any action or to do any act or thing in relation to its affairs, business and property as the MA may consider necessary (section 52(1)(A));

(b) to require the institution to seek the advice of an Advisor appointed by the MA on the management of its affairs, business and property (section 52(1)(B));

(c) to appoint a Manager to manage the affairs, business, and property of the institution (section 52(1)(C));

(d) to report the circumstances to the Chief Executive in Council (section 52(1)(D)).

Issue of a requirement under section 52(1)(A)

6.4 This course of action may be used to stop a problem from getting worse while allowing time for the institution concerned to take appropriate steps, as directed by the MA, to rectify the problems identified. Requirements issued under this section may include, for example, restricting the institution from expanding its business, actively seeking out new deposits, entering into new financial commitments or disposing of assets; or where applicable, taking any further sum of money from the issue of stored value facilities under an SVF licence or facilitating the issue of stored value facilities under an SVF licence.

6.5 This power can also be used in a broader sense to require an institution to cease to carry on its normal business. As such, it is akin to the power of suspension under section 25 of the Ordinance. Such a requirement may or may not be accompanied by the appointment of a Manager (see below).

Appointment of Advisor under section 52(1)(B)

6.6 The MA may appoint a person to advise the bank on the management of its affairs, business and property. This usually applies in cases where the MA considers that the management can still function and is acting in good faith, but requires the additional knowledge, experience and support of the appointed Advisor.

Appointment of a Manager under section 52(1)(C)

6.7 This usually applies where the MA is of the view that the management of the authorized institution cannot be relied upon to take appropriate steps to rectify a problem situation. The main objectives of appointing a Manager to take control of a problem authorized institution are -

(a) to provide for the control of the affairs, business and property of a troubled institution so that it can be nursed back to health or else be run down in an orderly fashion; or

(b) to safeguard the assets and maintain the fabric of the business of the institution until a liquidator can be appointed.

6.8 Ultimately, both objectives aim to protect the interests of depositors or potential depositors and creditors of the institution, and to maintain the stability of the banking sector.

6.9 When the MA gives a direction to appoint a Manager under section 52(1)(C), he is required to specify in the direction the primary objectives with which the Manager shall comply. This is intended to clarify the broad purpose of the Manager's appointment, for example, to safeguard the interests of depositors.

6.10 In the case of an institution incorporated outside Hong Kong, the scope of the Manager's powers would be confined to so much of the institution's affairs and business as are carried on, or managed, in or from Hong Kong and property of the institution located in, or managed from, Hong Kong, or which is an asset of the Hong Kong operations of the institution.

Report to the Chief Executive in Council under section 52(1)(D)

6.11 Under section 52(1)(D), the MA may report the circumstances of a problem institution to the Chief Executive in Council. Under section 53, upon receipt of the MA's report, the Chief Executive in Council may direct the Financial Secretary to present a petition to the Court of First Instance for the winding-up of the authorized institution.

6.12 Before the MA can make such a report to the Chief Executive in Council, the institution must be given an opportunity to submit representations in writing to the MA which shall form part of his report to the Chief Executive in Council.