



HONG KONG MONETARY AUTHORITY
香港金融管理局

Circulars

31 Jan 1997

Banking (Amendment) Ordinance 1997

Our Ref : G4/26/1C(97)

31 January 1997

The Chief Executive
All Authorized Institutions

The Chief Representative
All representative offices

The Chief Executive
All Money Brokers

Dear Sir/Madam,

Banking (Amendment) Ordinance 1997

This letter informs you of the enactment of the Banking (Amendment) Ordinance 1997 (the Ordinance) and sets out the main provisions of the Ordinance for your reference.

The Ordinance was enacted on 8 January 1997 and published in the Gazette on 17 January 1997. The main objectives of the Ordinance are:

- (a) to introduce a legal framework for the regulation of the issue of multi-purpose stored value cards;
- (b) to introduce a legal framework for the regulation of foreign exchange and deposit brokers operating in the wholesale foreign exchange and deposit market (money brokers); and
- (c) to update and improve on the working of some of the provisions of the Banking Ordinance.

A summary of the main provisions of the Ordinance [is enclosed](#) for your reference.

The majority of the Ordinance, including those provisions relating to multi-purpose stored value cards and money brokers, is scheduled for commencement at the beginning of the second quarter of this year (such commencement date will be published in the Gazette in due course). This is because more time is required to update the Guide to Applicants. However, the following provisions, which seek to improve on the working of some of the

existing provisions in the Banking Ordinance will commence operation on 3 February 1997. These include those provisions which:

- removes the requirement for giving the institution a right of being heard under section 23(1) in the case of a voluntary revocation
- simplifies the procedures for exercising section 52 powers to take control of a problem authorized institution
- removes the inconsistency between section 97A and section 97(1) by making section 97A subject to section 97(1) (this means that the consent granted under section 97(1) for the use of banking names and descriptions will also be applicable for the purpose of section 97A).

The commencement notice for the above provisions has been published in the Gazette on 31 January 1997.

Yours faithfully,

Raymond Li
Executive Director (Banking Policy)

c.c. The Chairman, HKAB
 The Chairman, DTCA
 The Chairman, HKFEDBA

Explanatory Note of main provisions of the Banking (Amendment) Ordinance 1997

Stored Value Cards (SVCs)

Definition of SVCs

1. The definition of SVCs has two parts:

(a) the first part defines a "single-purpose card" which will not be subject to the regulatory regime under the Ordinance; and

(b) the second part defines a "multi-purpose card" by reference to the issuer's undertaking that, on the production of the card to the issuer or a third party, the issuer or the third party will supply goods or services (including money or money's worth to cater for the redemption of unused value).

Approval for the issue of Multi-purpose cards

2. New section 14A makes it an offence for a person other than an authorized institution which is approved under new section 16(3A)(a), (which applies only to newly authorized deposit-taking companies (dtcs) whose principal business is to issue or facilitate the issue of multi-purpose cards (see new section 15(3)), or deemed to be approved under new section 16(3B), (which applies to licensed banks) to issue or facilitate the issue of multi-

purpose cards. The combined effect of these provisions is that existing rlbs and dtcs will not be eligible to apply for approval to issue or facilitate the issue of multi-purpose cards.

3. A "facilitator" is defined under the new section 2(11), to mean a person who facilitates the issuer of multi-purpose cards by the provision, whether directly or indirectly or by electronic means or otherwise, by the facilitator to the issuer of valuable consideration the value of which determines, whether in whole or in part, the extent to which the issuer may provide any undertaking referred to in the definition of SVC in respect of such multi-purpose card. The purpose of this definition is to include the originator of SVC value who may not itself be the issuer of the multi-purpose card. However, the provider of ancillary services, such as the manufacturer of the card or the integrated circuit chip embedded on the card, will not be regarded as a facilitator as long as the valuable consideration provided by such person to the issuer will not decide, in whole or in part the electronic value the issuer is to make available to cardholders.

4. New section 2(14), empowers the Monetary Authority ("MA") to specify by notice in the Gazette, and subject to such conditions, as are specified in the notice, certain stored value cards as not falling within the definition of "multi-purpose card". This is to enable the MA to exempt certain very limited-purpose cards from the approval requirements.

5. New section 14A(2), disapplies the provisions of sections 11, 12, and 14 to any sum of money received from the issue of any multi-purpose card by an approved issuer or a facilitator or exempt cards. This would enable special purpose vehicles dtcs authorized under new section 16(3A)(a), or exempt issuers to issue multi-purpose cards notwithstanding the restrictions of sections 11, 12 and 14.

6. New section 14A(4), makes it an offence for a person to, inter alia, use any device or scheme which is designed to have the effect of avoiding the requirement that multi-purpose cards may only be issued by approved authorized institution.

7. Sections 15 and 16 are amended to provide for the application by a company whose principal business is to issue or facilitate the issue of multi-purpose cards to be authorized as a dtc for approval to conduct these activities, and the Monetary Authority's determination of any such application. The provisions relating to the approval of companies to issue multi-purpose cards largely parallel the provisions relating to the authorization of companies as authorized institutions, including provisions relating to the imposition of conditions and right of appeal.

8. New sections 16(9)(aa), (ab), and (ac), provide that the MA may attach a condition -

(a) imposing requirements in respect of the administration, maintenance, management, use and regulation of any sum of money taken for any multi-purpose card by an authorized institution acting as an issuer or facilitator; or

(b) imposing requirements for the segregation of any such sums;

(c) to require the authorized institution to cease issuing or facilitating the issue of multi-purpose cards or taking further sum of money in relation to multi-purpose cards issued by it or for facilitating the issue of such cards.

Effect of revocation and suspension of authorization

9. Sections 23(2) and 27(1) are amended to specify that in the event of the revocation or suspension of the authorization of an authorized institution, the institution, if it has the approval to issue or facilitate the issue of multi-purpose cards, should cease to issue or facilitate the issue of further multi-purpose cards or take further sum of money in relation to multi-purpose cards issued by it or for facilitating the issue of such cards.

10. New section 2(13), enables the MA to exercise his power under section 22(4) to give consent to an authorized institution whose authorization has been revoked or is being proposed to be revoked to continue to hold any sum of money which is either paid to the issuing authorized institution as referred to in the definition of SVC or paid to the authorized institution acting as a facilitator, as if such sum of money is a deposit referred to in section 22(4).

Section 52 powers in respect of the issue of multi-purpose cards

11. New section 2(12), clarifies that references in the Ordinance to the affairs, business and property of an authorized institution include, in the case of an institution approved by the MA to issue multi-purpose cards, any affairs, business and property of the institution arising out of that approval. This would enable the Monetary Authority to apply section 52 powers, if necessary, to take control of the business, affairs and property of the institution arising from the issue of multi-purpose cards to ensure orderly redemption of unused value in the card to cardholders in the event of a "meltdown" situation.

Transitional arrangements

12. New section 153 provides that where a company is issuing or facilitating the issue of multi-purpose cards immediately before the commencement of operation of the Ordinance, it shall be deemed to have been approved under the Ordinance to issue or facilitate the issue of multi-purpose cards:

(a) until the expiration of 3 months (such period may be extended by the MA on application made by the issuer) following the commencement of the operation of the Ordinance;

(b) if it has applied for approval before the expiry of the 3-month period, until the determination of such application;

(c) if the application is refused, until the expiry of 14 days immediately following that refusal;

(d) if (c) is applicable, until such further period the MA may, on application made by the relevant issuer before the expiry of the period of 14 days, decide.

13. New section 153(3), provides that the MA may require the company referred to in paragraph 12 to carry on its business of issuing or facilitating the issue of multi-purpose cards in accordance with the conditions he may impose.

Money brokers

Definition of money brokers

14. "Money broker" is defined under the Ordinance as a person who, for rewards, carries on a business in or from Hong Kong, or provides to persons in Hong Kong the service, of negotiating, arranging, or facilitating, whether by electronic means or otherwise, agreements between other persons-

(i) in respect of the making of deposits of any currency; the purchase or sale of any currency; or the purchase or sale of an instrument declared in a notice under the new section 2(14)(a) by the Monetary Authority;

(ii) one of which is an authorized institution; and

(iii) as agent for, or as the provider of a dealing service to not less than one of those persons.

15. "Dealing service" means a service, offered in person or by electronic means or otherwise, whereby the persons to whom the service is provided could quote bid or offer prices or rates for the purpose of effecting an agreement of any type referred to in the definition of "money broker"; and such prices or rates may be matched pursuant to the service or accepted by any of those other persons to whom the prices or rates are quoted.

16. Paragraph (b)(i) of the definition of "money broker" excludes any persons whose acting as a money broker is wholly ancillary or incidental to a business carried on by the person which, if the business is, or were to be, carried on in or from Hong Kong, is not or would not be, the business of acting as a money broker. This is to exclude investment advisors, securities dealers, solicitors or professional accountants whose acting as a money broker (such as the placing of deposits for their clients) would be wholly ancillary or incidental to their core business.

Approval of money broker

17. New section 118A provides that no person shall act as a money broker unless the person is an approved money broker. New section 118B provides that applications for approval shall be submitted to the Monetary Authority. New section 118C(1), provides that the Monetary Authority may approve or refuse such applications.

18. New section 118C(2), provides that the Monetary Authority shall refuse to approve an applicant company if it fails to fulfill the relevant criteria specified in the Eleventh Schedule. In brief, these criteria include:

(a) directors, controllers and chief executive, must be fit and proper persons ;

(b) the financial resources of the company is adequate for the nature and scale of its operations and its minimum paid-up capital is not less than \$5 million;

(c) adequate accounting systems and adequate systems of control;

(d) the business of the company must be carried on with integrity, prudence, and professional competence.

19. In relation to money brokers incorporated outside Hong Kong, under paragraph 1(4) of the Eleventh Schedule, the Monetary Authority may regard himself as satisfied with respect to any matter relating to the authorization criteria where the relevant money broker supervisory authority informs the Monetary Authority that it is satisfied in relation to that matter, provided that the Monetary Authority is satisfied as to the scope and nature of the supervision exercised by that authority.

20. New sections 118C(1)(a)(ii) and (4) provide that the Monetary Authority may attach conditions to the certificate of approval.

Revocation of approval

21. New section 118D empowers the Monetary Authority to revoke the approval of a money broker after consultation with the Financial Secretary on the grounds specified in the Twelfth Schedule. The main grounds include:

- (a) the Monetary Authority would be unable to approve the company if it were now to make an application on the grounds that it no longer meets one or more of the criteria in the Eleventh Schedule;
- (b) failure to provide information or provision of false or misleading information which is of a material nature; cessation to carry on the business of a money broker; or contravention of any condition attached to its certificate of approval;
- (c) voluntary revocation.

22. New section 118E(3) provides that the revocation of the approval of a money broker will not operate to prejudice the enforcement or maintenance by any person of any rights or interest against the money broker or by the broker of any right or interest against any person.

Right of being heard and appeal

23. New sections 118C(5) and 118E(1) provide that before exercising the power to refuse to approve a company, or revoke the approval of a money broker, the Monetary Authority shall give the company/money broker an opportunity, within such period which is reasonable in the circumstances, of being heard.

24. New section 134B provides further that the Monetary Authority shall consult with the Hong Kong Foreign Exchange and Deposit Brokers' Association where he proposes to attach any condition to the certificate of approval of each approved money brokers which is a member of the Association, or to give a particular approved money broker an opportunity of being heard before attaching a condition to its certificate of approval.

25. New section 132A provides that:

- (a) a company aggrieved by the refusal of the Monetary Authority to approve it to become a money broker;

(b) an approved broker aggrieved by the attachment by the Monetary Authority of any conditions to its certificate of approval;

(c) an approved money broker aggrieved by the proposed revocation of its approval;

may appeal to the Governor in Council. However, the refusal of approval or the conditions shall take immediate effect notwithstanding that an appeal has been made.

Transition

26. New section 153(4) provides that where a company is acting as a money broker immediately before the commencement of operation of the Ordinance, it may continue to do so:

(a) until the expiration of 3 months (such period may be extended by the MA on application made by the issuer) following the commencement of the operation of the Ordinance;

(b) if it has applied for approval before the expiry of the 3-month period, until the determination of such application;

(c) if the application is refused, until the expiry of 14 days immediately following that refusal;

(d) if (c) is applicable, until such further period the MA may, on application made by the relevant company before the expiry of the period of 14 days, decide.

27. New section 153(5) provides that the MA may require the company referred to in paragraph 26 to carry on its business in accordance with any conditions he may impose.

Definition of "banking business"

28. The definition of "banking business" under section 2(a) is amended to provide that banking business consists of, inter alia, receiving from the general public money on current, deposit or savings account repayable within a period of or at call or notice of less than the period specified in item 1 of the First Schedule.

Revocation

29. New section 23(4) exempts the MA from the requirement under section 23(1) to provide the authorized institution an opportunity to be heard where the proposed revocation is requested by the authorized institution concerned.

Grounds for exercising the powers under section 52

30. Section 52(1)(c) is amended to enable the MA to form an opinion on whether any of the grounds under section 52(1)(c)(i) to (iv) exist without having to complete an examination or investigation made under section 55, or receive a report made under the requirement of sections 59(2) or 63(3A). This is to provide a flexibility for the MA to take urgent action without having to complete the relevant examinations, investigations or report.

31. Section 52(1)(c) is also amended to enable the MA to exercise any of the powers under section 52 when his power under section 22(1) to propose to revoke the authorization of an authorized institution is exercisable (and whether or not section 23(1) has been complied with). This amendment will make the grounds for revocation consistent with the grounds for exercising section 52 powers and will give the MA a wider range of options to deal with a banking crisis.

Consolidation

Appeal provisions

32. New section 132A consolidates all appeal provisions.

Penalty provisions

33. New Thirteenth Schedule sets out the existing hierarchy of fines for offences under the Ordinance into 9 tiers. The level of fines in each tier has been doubled to retain its deterrent effect in the light of inflation over the period since its last revision in 1986.