Our Ref: G4/26/3C (99)
B1/15C

17 February 2000

To: The Chief Executives
All authorized institutions

Dear Sir/Madam,

Banking (Amendment) Ordinance 1999

I would like to inform you that clauses 11, 12 and 14 of the Banking (Amendment) Ordinance ("BAO") 1999 will commence operation on **18 February 2000**. In conjunction with the commencement of these clauses, supervisory guidelines on sections 87A (i.e. clauses 11 and 14) and 121(3) (i.e. clause 12) will be issued and published in the gazette on the same day under section 7(3) of the Banking Ordinance ("Ordinance"). Copies of the two guidelines are enclosed at Annex A and Annex B respectively for your reference.

The main provisions of clauses 11, 12 and 14 are as follows:

(a) Clause 11 introduces the new section 87A into the Ordinance, which imposes a requirement on locally incorporated authorized institutions ("local AIs") to seek the Monetary Authority's ("MA") prior approval for any major acquisition or investment in a company (including establishment of a company) which constitutes 5% or more of their capital bases. This new requirement may be applied to an institution on both a solo and a consolidated basis. Clause 14 amends section 132A of the Ordinance which is the appeal provision in relation to section 87A.

In accordance with subsection (3), two categories of acquisitions or investments in companies will be deemed to have been approved by the MA. The first category relates to investments in companies held by a local AI immediately before the commencement day of section 87A ("relevant day") which has a value of 5% or more of the capital base of the institution. The second category relates to share capital to a value of 5% or more of the capital base of the local AI which is acquired not later than a transition period of 3 months after the relevant day, but the acts or circumstances by virtue of which the institution comes to hold such share capital substantially occurred before the relevant day.

As stated in the guideline on section 87A, local AIs should notify the MA of all acquisitions or investments in companies to which subsection (3) is relevant. In respect of the first category of acquisitions or investments, local AIs should submit a list of such companies (with brief descriptions about the nature of business of each of the companies) to the MA as soon as practicable. For the purposes of meeting this requirement, local AIs should use the current book value of the investments and their capital base figures as at the end of the previous quarter (i.e. 31 December 1999) in determining whether an investment should be captured under subsection (3)(a).

In respect of the second category of acquisitions or investments, local AIs should submit a list of such companies (with brief descriptions about the nature of business of each of the companies) to the MA as soon as practicable after the expiration of the 3-month transition period stated in subsection (3)(b). Paragraphs 3 to 5 of the guideline should be followed in determining whether an acquisition should be captured under subsection (3)(b).

(b) Clause 12 amends section 121(3) of the Ordinance and removes the restriction on the MA to disclose individual customers' information to overseas supervisory authorities. Pursuant to the commencement of clause 12, the MA will be empowered to attach conditions to any disclosure made under section 121 e.g. the MA may require the recipient authority to seek its prior consent for any onward transmission of the information disclosed to it. This condition is mandatory in the case of disclosure of individual customers' information. The guideline on section 121(3) sets out the manner in which the MA will exercise his discretion to disclose information about individual customers of AIs and the criteria for such disclosure.

By 18 February 2000, all but clause 6 (i.e. section 60A) of the BAO 1999 will have commenced operation. Clause 6 will come into effect as soon as practicable subject to the conversion of the existing guidelines on financial disclosure into subsidiary legislation. I shall advise you again when the exact commencement date of clause 6 has been finalised.

Should you have any queries relating to the BAO 1999 or the supervisory guidelines on section 87A and 121(3), please feel free to contact either Miss Anna Woo on 2878 8280 or Mr Raymond Chan on 2878 1846.

Yours faithfully,

(D T R Carse)
Deputy Chief Executive

Encl.

c.c. The Chairman, HKAB
The Chairman, DTCA
The Chairman, HKFEDBA
The President, HKSA
SFS (Attn: Miss Clara Tang)
The Chief Representative, All Representative Offices
The Chief Executive, All Money Brokers