



## Supervisory Policy Manual

CR-L-5

**Major Acquisitions and Investments:  
§87A**

V.1 - 31.08.01

This module should be read in conjunction with the [Introduction](#) and with the [Glossary](#), which contains an explanation of abbreviations and other terms used in this Manual. If reading on-line, click on blue underlined headings to activate hyperlinks to the relevant module.

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### Purpose

To set out the manner in which the MA will exercise the powers of approval under §87A of the Banking Ordinance

### Classification

A statutory guideline issued by the MA under the Banking Ordinance, §7(3)

### Previous guidelines superseded

Guideline “Major Acquisitions by Authorized Institutions of Share Capital in Companies - §87A of the Banking Ordinance” dated 17.02.00

### Application

To all locally incorporated AIs

### Structure

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### 1. Introduction

- 1.1 Under §87A of the Banking Ordinance, an AI incorporated in Hong Kong should not acquire, whether by one acquisition or a series of acquisitions, all or part of the share capital of a company to a value of 5% or more of the AI's capital base without the MA's prior approval. Nor should such a shareholding continue if the approval is revoked, as is within the MA's powers. The restriction also applies to the establishment of a company.
- 1.2 The purpose of §87A is to enable the MA to establish criteria for reviewing major acquisitions or investments by an AI and ensure that corporate affiliations or structures do not expose the AI to undue risks or hinder effective supervision.

### 2. Supervisory approach

#### 2.1 Capital base

- 2.1.1 For the purposes of §87A, the capital base of an AI is defined in accordance with §79(2) and is that which applies at the time of the acquisition of the relevant shares (see also subsection 2.2 below). Normally the figure as at the end of the previous quarter will be used. The MA may, however, require an AI to use its latest capital base figure for this purpose if it has fallen significantly compared with the figure at the end of the previous quarter.
- 2.1.2 For calculating the 5% threshold, the value of the shares is that at which they would be shown in the books of the AI at the time of the acquisition, together with the amount for the time being remaining unpaid on the shares, if any. Normally this value will be determined by the cost of acquisition.



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2.1.3 For the purposes of §87A, share capital excludes shares acquired in the course of the satisfaction of debts due to an AI or under an underwriting or sub-underwriting contract for up to seven working days or such further period as the MA may approve in writing.

2.1.4 An AI is not required to seek the MA's prior approval where it acquires share capital of a company of less than 5% of its capital base at the time of the acquisition, nor where a subsequent fall in the AI's capital base causes its percentage holding in the company to rise to 5% or more of its capital base. Similarly prior approval is not required if a rise in the market value of an AI's existing holding of shares causes the current book value to rise to 5% or more of its capital base.

## 2.2 Consolidated supervision

2.2.1 The MA will apply the provisions of §87A on both a solo and a consolidated basis in accordance with §79A. This means that an acquisition of shares in a company by a subsidiary which is consolidated for the purposes of Part XV of the Banking Ordinance will require the MA's prior approval if the value of the acquisition is 5% or more of the AI's consolidated capital base.

2.2.2 Subsidiaries to be included for consolidated supervision for the purposes of §87A will be the same as those currently included for consolidation under §79A, unless otherwise advised by the MA. In the latter case, the MA will discuss with individual AIs, and notify them in writing, which subsidiaries will be included for consolidation. See [CR-L-1](#) "Consolidated Supervision of Concentration Risks under Part XV: §79A" for more information.

## 2.3 Deemed approval

2.3.1 Under §87A(3), approval shall be deemed to have been granted in respect of the holding of shares in any company to a value of 5% or more of an AI's capital base where:



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- the share capital was acquired prior to the commencement date of clause 11 of the Banking (Amendment) Ordinance 1999 (18.02.00); or
- the share capital was held by an AI not later than three months after the commencement date where the acts or circumstances by virtue of which the AI came to hold such share capital occurred substantially before that date.

2.3.2 AIs should notify the MA of all acquisitions or investments in companies to which §87A(3) is relevant.

### 2.4 Approval procedures

2.4.1 AIs should contact the HKMA at an early stage to discuss intended acquisitions that may be captured under §87A. A formal notice in writing in advance of the acquisition should be submitted, seeking the MA's approval under §87A. The notice should be accompanied by information on the proposed acquisition, including the following, where relevant<sup>1</sup>:

- the name of the company being acquired;
- its place of incorporation or establishment;
- the value of the acquisition in money terms and as a percentage of the AI's capital base;
- the impact of the acquisition on the AI's solo and consolidated capital adequacy ratios;
- the percentage of the company's shares that will be held by the AI and whether the company will become an associate or subsidiary of the AI as a result of the acquisition;
- how the acquisition will fit into the AI's group structure;

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<sup>1</sup> The relevance of some of the items will depend on whether the acquisition will represent a portfolio or a direct investment by the AI.



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- how the acquisition will be funded;
- the nature of the business of the company and its internal control systems;
- financial information on the company (balance sheet, profitability, capital ratios, etc.) for three consecutive years;
- the management structure and corporate affiliations of the company;
- the proposed degree of involvement of the AI in the direction and management of the company's affairs, including representation on the Board of Directors;
- the proposed business plan for the company;
- the manner in which the investment will be managed and controlled by the AI, including reporting lines from the company to the AI and any limits established over the company's activities;
- whether the company is subject to any formal regulation or supervision in its place of incorporation or establishment, e.g. by stock exchanges or financial regulators, and if so the names of the regulators or supervisors concerned; and
- details of any secrecy constraints on disclosure of information to the AI by the company being acquired.

2.4.2 After receiving a formal notice, the MA will, as soon as practicable, issue either a consent or refusal of approval to the AI.

2.4.3 The AI should inform the HKMA of any major changes to the above information between submission of the application for approval and the acquisition.

## 2.5 Refusal of approval

2.5.1 The MA may refuse to grant approval if it is considered that the interests of depositors or potential depositors of the AI



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would be threatened by the proposed acquisition. In forming this view, the following factors will be taken into consideration:

- the financial capacity and ability of the AI to make the acquisition;
- the impact on the capital adequacy of the AI and its ability to fund the acquisition;
- the present financial condition and the possible future requirements of the company in terms of injections of capital and liquidity and any consequent drain on the financial resources of the AI;
- the managerial capacity of the AI to ensure that the activities of the company are conducted in a prudent and reputable manner;
- any undue risks to which the AI may be exposed arising from the acquisition. Factors to be taken into account would include:
  - the size and nature of the business of the company;
  - the reputation and standing of the company;
  - the present or proposed management structure of the company and the quality of its management;
  - the present or proposed nature of the internal control systems within the company;
  - the reporting lines to the AI and its monitoring arrangements (including the type and frequency of information to be provided);
  - the arrangements within the AI to monitor the company and the amount of time to be devoted to such monitoring;
  - the past experience and skills of the AI in managing its investments or acquisitions; and



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- the place of incorporation or establishment of the company, in particular whether the relevant corporate laws are inconsistent with the laws of Hong Kong and whether there are any secrecy constraints which would inhibit effective consolidated supervision by the HKMA.

2.5.2 Where the MA intends to refuse to grant approval, the AI will be advised of the proposed reasons in order to allow the AI to make representations, prior to making the final decision.

2.5.3 The formal notice of refusal of approval will specify the particular grounds on which the MA refuses to grant approval for the proposed acquisition.

## 2.6 Conditions

2.6.1 Under §87A(4), the MA may attach conditions to an approval granted under §87A(2)(a) or deemed to have been granted under §87A(3) (see subsection 2.3 above). Such conditions may be attached when the initial consent to acquire a company is given or subsequently, when the MA is of the view that such conditions are necessary to safeguard the interests of depositors or potential depositors of the relevant AI. In deciding whether to attach conditions, the MA will take into account the same factors as those set out in para. 2.5.1 above.

2.6.2 Before the MA attaches conditions to any approval, the conditions and the reasons for them will be discussed with the AI in order to give it an opportunity to make representations.

2.6.3 The conditions will be set out in a written notice specifying the reasons for them. The MA may subsequently issue a written notice amending or revoking any such conditions.

## 2.7 Revocation of approval

2.7.1 Under §87A(5), the MA may revoke an approval that has been given, or is deemed to have been given under §87A(3) (see subsection 2.3 above), for the acquisition of a company



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to a value of 5% or more of an AI's capital base. The relevant AI will be required to reduce its holding in the company concerned to less than 5% of its capital base on or before the date the revocation comes into effect.

2.7.2 Such action may be taken when the MA is of the opinion that the interests of depositors or potential depositors of the relevant AI are threatened in some manner. The factors that will cause the MA to form this view are the same as those set out in para. 2.5.1 above.

2.7.3 Where the MA intends to revoke an approval, the AI will be advised of the proposed reasons in order to allow the AI to make representations, prior to issuing the formal notice.

2.7.4 The formal notice will state the particular grounds on which the MA has revoked the approval and specify a period within which the AI should make the necessary reduction in its shareholding. Such period will be discussed with the AI and will be reasonable, taking into account the particular circumstances of the case.

2.7.5 The MA will be prepared to consider an extension of the deadline for the reduction in shareholding if it is believed that the AI has made genuine attempts to achieve the disposal but has been unable to find a buyer for the shares within the original deadline.

## 2.8 Right of appeal

2.8.1 An AI which is aggrieved by the MA's refusal to grant approval under §87A, a decision to attach conditions or a decision to revoke approval may appeal to the Chief Executive in Council under §132A. Nevertheless the refusal, conditions or revocation, as the case may be, shall take effect immediately, notwithstanding that an appeal has been made.

## 2.9 Advance notice of other acquisitions

2.9.1 In addition to the statutory requirement under §87A, AIs are expected to notify the MA in advance of acquisitions that



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may have a significant impact on their financial position, business strategy, managerial resources or reputation.

2.9.2 Examples of such acquisitions would include the following:

- those where the AI would become a significant shareholder in another financial institution, in Hong Kong or overseas, and in particular where consent would be required from another regulator for such acquisitions;
- those which would result in the company concerned becoming a subsidiary of the AI and subject to consolidation for the purposes of Parts XV, XVII or XVIII of the Ordinance;
- those which would have a material adverse impact on the capital adequacy ratio of the AI (say 0.5% or more); and
- those which would represent a significant diversification by the AI into a new line of business or into non-financial activities (including, for example, investment in a property company).

2.9.3 The MA reserves the right in such cases, following notification, to request the AI concerned to supply it with additional information along the lines specified in para. 2.4.1 above.

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