



HONG KONG MONETARY AUTHORITY
香港金融管理局

Circulars

10 Jan 2002

Banking (Amendment) Ordinance 2001

Our Ref: G4/26/5C
B1/15C

10 January 2002

To: The Chief Executive
All authorized institutions

The Chief Representative
All local representative offices

The Chief Executive
All money brokers

Dear Sir / Madam,

Banking (Amendment) Ordinance 2001

I write to inform you of the enactment of the Banking (Amendment) Ordinance 2001 (BAO 2001), a copy of which is attached at [Annex 1](#), and of the need to take steps to comply with the new provisions under this Ordinance.

The BAO 2001 was enacted on 19 December 2001 and published in the Gazette on 28 December 2001. The main provisions contained therein include those which aim at:

Control over authorized institutions' places of business

- a. Extending the definition of "local branch" to cover any place of business in Hong Kong at which an authorized institution (AI) carries on banking business or any other business which involves the incurring of financial exposures as specified under section 81(2) of the Banking Ordinance (BO). As a result of the amendments, establishment of a place of business to conduct activities such as the granting of loans or credit facilities will require prior approval of the Monetary Authority (MA) under section 44 of the BO. In accordance with the new section 44(3A), existing offices of AIs which would be regarded as a local branch because of the expanded definition will be grandfathered. AIs will be required to provide the HKMA with a list of such branches upon the commencement of BAO 2001;
- b. Introducing a term "local office" which is defined as a place of business in Hong Kong from which any business of an AI is promoted or assisted and to which members of the public ordinarily have physical access for the purpose of such business (e.g. sales and

service centres). Under the new section 45A(1), Als are required to notify the MA not less than 7 days before commencing business at a local office. However, no fee is payable for the establishment or maintenance of such an office. In accordance with section 45A(2), Als shall provide the MA with a list of their existing local offices within 3 months after BAO 2001 comes into operation. Als should therefore consider whether there are any of their existing offices which would fall within the definition of "local office" and start compiling the list;

Advertising materials for deposits issued over the internet

- c. Enhancing the existing section 92 of the BO to ensure that no person, other than those exempted under this section, can issue advertising materials through the internet or other new technological means to solicit deposits from members of the public in Hong Kong. The new provisions also make clear that only advertisements which target at members of the public in Hong Kong would be caught under the legislation. A guideline on this issue is being prepared and will be issued after commencement of the new provisions;

Fitness and propriety of managers

- d. Re-defining "manager" as any individual, other than a director or chief executive (including alternate chief executive), who is appointed by the AI or any third party to be principally responsible for the conduct of the key businesses or affairs specified in the new Fourteenth Schedule. Under the revised definition, only those senior executives of Als who are in charge of key businesses or affairs, such as retail banking, corporate banking, internal audit, risk management, compliance and information technology etc., will be regarded as "managers". The objective of the amendment is to ensure that only those individuals whose functions are central to the safety and soundness of Als will be captured under the definition of "manager";
- e. Introducing a new authorization criterion which requires Als to maintain adequate systems of control to ensure the fitness and propriety of their "managers". The relevant standards and requirements for such systems are specified in the statutory guideline "Systems of Control for the Appointment of Managers" (see [Annex 2](#)) to be issued upon the commencement of the BAO 2001; and
- f. Introducing a new section 72B which requires Als to notify the MA and the person who has been appointed as a manager not later than 14 days after the appointment was made. The notification requirement under section 72B also applies to subsequent changes to such appointments, including cessation of existing appointments and changes in the responsibilities of existing managers.

The other amendments seek to improve the working of individual provisions of the BO in the light of experience. A summary of these amendments is at [Annex 3](#).

Als should now take steps to prepare themselves for compliance with the new provisions. As a large part of the BAO 2001 relates to the new definition of managers, its commencement would depend on Als' readiness in complying with the requirements under the new regulatory regime relating to the appointment of managers.

In particular, Als should review their existing management structure and identify all managerial positions which are occupied by individuals who would fall within the revised definition of "manager". In considering how the definition would apply to their organisation,

they should refer to the general guidance given in the guideline mentioned above. In case of doubt, Als may consult the relevant case officers in the HKMA or their legal advisers. After completing the review, Als are required to submit a list of such individuals using the form at [Annex 4](#), together with the latest organisation chart, to the HKMA for review by **6 March 2002**. The purpose of this exercise is for individual Als to agree with the HKMA the list of managerial positions captured under the new definition. Once this exercise is fully completed (probably by the end of April), we will designate a commencement date for the whole BAO 2001 (probably in early May). As in the past, I shall advise you again when the exact commencement date of BAO 2001 has been fixed. Als will then be required to make relevant notifications to the HKMA and the individuals concerned under the new section 72B within 14 days of the commencement of BAO 2001.

Should you have any questions relating to BAO 2001, please contact Ms Linda Yiu at 2878 8280 or Mr Raymond Chan at 2878 1846.

Yours faithfully,

(D T R Carse)
Deputy Chief Executive

Encl.: [Annex 1](#) (English Version, pdf file, 119KB)
 [Annex 1](#) (Chinese Version, pdf file, 368KB)
 [Annex 2](#) (MS Word, 776KB)
 [Annex 3](#) (MS Word, 23KB)
 [Annex 4](#) (MS Word, 21KB)

c.c. The Chairman, HKAB
 The Chairman, DTCA
 The Chairman, HKFEDBA
 SFS (Attn: Miss Clara Tang)

Last revision date : 01 August 2011