

**Explanatory Note on Legal Obligations of
Managers of Authorized Institutions under the Banking Ordinance**

This explanatory note aims at highlighting the legal obligations of managers¹ under the Banking Ordinance (“the Ordinance”).

As part of the senior management team, managers of an authorized institution (“AI”) play a pivotal role in ensuring the financial soundness and efficient operation of the AI. Given the importance of their role, the Ordinance imposes on managers a joint legal responsibility with the directors and chief executive in ensuring that the AI complies with all applicable laws and regulations. In particular, managers may be held personally accountable under the offence provisions of the Ordinance for non-compliance with various statutory requirements. Such requirements generally relate to the following areas:

- limitation on loans by and interests of the AI;
- capital adequacy and liquidity ratios;
- safe and sound banking practices; and
- reporting requirements.

This being the case, section 2(17) of the Ordinance has made it clear that where an offence is committed by an AI, one or more than one of the AI’s directors, chief executives and managers may be prosecuted for the offence. The corollary of this is that although the decision to prosecute or not ultimately rests with the Secretary for Justice, prosecution for an offence under the Ordinance will not necessarily be instituted against every director, chief executive or manager of an AI (e.g. where the manager has no involvement in or responsibility for the commission of the offence).

Furthermore, a defence is available to any person being prosecuted under the Ordinance. Section 126(1) of the Ordinance provides that it shall be a defence for the person charged to prove that he has taken reasonable precautions and exercised due diligence to avoid the commission of the offence concerned by himself or any person under his control. The defence under section 126(1) is however not available to the offences listed in section 126(2).

¹ Under section 2 of the Banking Ordinance, the term “manager”, in relation to a locally incorporated AI, means an individual (other than a director, the chief executive or an alternate chief executive) appointed by the AI or any third party to be principally responsible for the conduct of its affairs and business as specified in the Fourteenth Schedule to the Ordinance. A similar definition applies to overseas incorporated AIs in respect of the conduct of their relevant affairs or business in Hong Kong.

Managers are advised to fully understand their obligations under the Ordinance. On-line access to the Ordinance is available under the Hong Kong Government Homepage (<http://www.justice.gov.hk/Home.htm>). If managers have any doubt regarding the interpretation or meaning of any particular provision in the Ordinance, they should consult their legal advisors in the first instance and the HKMA if necessary.

*Hong Kong Monetary Authority
May 2002*