



Circulars

07 Mar 2003

Miscellaneous provisions of the Banking (Amendment) Ordinance 2002 (BAO 2002)

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

7 March 2003

The Chief Executive
All Authorized Institutions

Dear Sir / Madam,

Miscellaneous provisions of the Banking (Amendment) Ordinance 2002 (BAO 2002)

Further to my letter of [20 December 2002](#), I write to notify you that the BAO 2002 and the Securities and Futures Ordinance (SFO) will come into operation on 1 April 2003 as the negative vetting process in relation to the commencement notice has been completed. As you will be aware, the main provisions of the BAO 2002, as well as the SFO, were discussed in my letter of [5 July 2002](#). This letter aims to provide you with a brief account of certain miscellaneous provisions introduced under the BAO 2002. **Some of these provisions apply to all authorized institutions** (AIs), i.e. regardless of whether it is their intention to engage in regulated activities under the SFO. It is therefore imperative that these AIs are also aware of the new legal requirements.

Provisional consent for persons seeking to become executive officers (EOs)

Section 71E of the revised Banking Ordinance (BO) provides that the HKMA may, upon request of a person seeking consent to be an EO of a registered institution (RI), and in its absolute discretion, give provisional consent to the person to be such EO. The HKMA may attach any condition to the provisional consent as it thinks proper. This provision aims to facilitate RIs' compliance with the statutory condition of registration to have at least two EOs to supervise the business of each regulated activity.

Submission of information by specified persons

The meaning of the term "specified person" under the revised section 72A(1) of the BO is extended to include EOs and other relevant individuals of RIs. Under section 72A(2), the HKMA may require a specified person to submit such information as it may reasonably require for the exercise of its functions. The information shall be submitted within such period and in such manner as the HKMA may require.

Notification of end of financial year etc

Section 59B of the revised BO requires, among other things, that an AI¹ which has been authorized before the commencement of the section (i.e. 1 April 2003) shall, **not later than one month after that commencement, notify the HKMA in writing of the date on which its financial year ends**. An AI shall not alter such date or have its financial year exceed twelve months except with the HKMA's approval.

Matter to be reported to the HKMA by auditors of AIs

Section 63A of the revised BO requires an auditor of an AI to submit to the HKMA a report in writing if he becomes aware of a matter which adversely affects the financial position of an AI to a material extent². The report should state the nature of the matter and the reason why the auditor is of that opinion. With this new section becoming effective, sub-sections 63(3A) (b)(iii) and 63(3E) will be repealed.

Should you have any questions relating to this letter, please contact Miss Maisy Chang at 2878-1604, Mr. Neville Ng at 2878-8283 or Mr. Samuel Leung at 2878-1541.

Yours faithfully,

D T R Carse
Deputy Chief Executive

¹. It should be noted that licensed corporations and associated entities of intermediaries as defined under the SFO are subject to similar requirements pursuant to section 155 of the SFO.

². It should be noted that auditors of licensed corporations or associated entities of intermediaries are subject to similar reporting requirement under section 157 of the SFO.

c.c.: The Chairman, HKAB
 The Chairman, DTCA
 SFC (Attn: Mrs Alexa Lam)
 FSTB (Attn: Miss Emmy Wong)