



Circulars

20 Dec 2002

Commencement of the Banking (Amendment) Ordinance 2002 (BAO 2002) and the Securities and Futures Ordinance (SFO)

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

20 December 2002

The Chief Executive
All authorized institutions

Dear Sir / Madam,

Commencement of the Banking (Amendment) Ordinance 2002 (BAO 2002) and the Securities and Futures Ordinance (SFO)

The Government has announced recently that the target commencement date for the BAO 2002 and the SFO will be 1 April 2003. This letter sets out the key issues in relation to which you are required to take prompt actions in order to prepare for the new regime, as well as other relevant information. It should be read in conjunction with my previous circulars issued on 5 July 2002 and 12 September 2002 respectively¹.

Key issues with prompt actions required

There are a few key issues that require immediate management attention. You should nevertheless also review the entire BAO 2002 and the relevant parts of the SFO to assess the implications arising therefrom on your business operations. Legal advice should be sought where necessary.

Deemed registered institutions (Deemed RIs)

Als that currently are exempt dealers, exempt investment advisers, or licensed banks engaging in investment advisory activities will become deemed RIs under the SFO upon the commencement date. Although they will have a two-year transitional period to apply to the Securities and Futures Commission (SFC) to become RIs, they should begin to plan ahead immediately and keep the HKMA informed of their intention. In general, we expect deemed RIs to formally notify us at least four months before they submit their applications to the SFC. The HKMA may discuss with individual institutions to adjust their schedule in the light of the workload and available resources.

Register of relevant individuals

As stipulated in my circular of 12 September 2002, every deemed RI will be required to submit to the HKMA a list of those individuals who, as at a specified date before the commencement of the BAO 2002, perform any act that would constitute a regulated function in a regulated activity. Subject to any change prior to the commencement date, the names and particulars of such individuals will be entered in the register to be maintained by the HKMA.

All individuals who are acting in such a capacity for your institution as at 28 February 2003 should be reported to the HKMA by 3 March 2003. The submission should be performed by means of a spreadsheet via STET. Annex 1 to the said circular provides the details of the information to be submitted, and the template for submission will be provided in due course. This list will then have to be updated by each deemed RI through on-line submission for every change in the list of individuals prior to the commencement date. Further details on this on-line submission mechanism will be provided later. The updated position as at 31 March 2003 will form the list of deemed relevant individuals engaged by the deemed RI in regulated activities, and will be put on the HKMA register of relevant individuals upon the commencement of the new regime. You are also reminded that any change to the information submitted to the HKMA for the purpose of the register should be notified in writing within seven business days of such change.

You should take immediate steps to ensure that an internal database is established to facilitate the submission to the HKMA of the required information in the required format, and that the submission deadline can be met.

Legal and regulatory requirements

Notwithstanding the 2-year transitional period mentioned above for registration under the SFO, it must be emphasised that by virtue of sections 53(4) and (5) of Schedule 10 of the SFO **the provisions of the Ordinance (including the relevant subsidiary legislation, i.e. Rules made by the SFC) apply to deemed RIs and their deemed relevant individuals immediately upon the commencement of the transitional period.** You should note in particular the legal and regulatory requirements set out in Parts VI and VII of the SFO relating to the conduct of regulated activities.

We have advised in my circular of 18 November 2002² the list of Rules that are applicable to RIs. Attach herewith at [Annex](#) is a list of the current (as well as some forthcoming) codes, guidelines and circulars³ issued by the SFC that are similarly applicable. You will receive reminders when the SFC issues new or amended legal or regulatory requirements in relation to the carrying on of regulated activities.

Deemed RIs and their deemed relevant individuals should take immediate actions to familiarize themselves with the relevant statutory provisions as well as the SFC codes, guidelines and circulars with a view to ensuring compliance upon commencement of the new regime. They are also advised to visit the SFC's web-based Regulatory Handbook (at www.hksfc.org.hk) regularly for updates and the Frequently Asked Questions posted from time to time by the SFC on its legal and regulatory requirements. **Where system development/changes are necessary to achieve compliance, deemed RIs must ensure that these are completed within the first quarter of 2003.**

Disciplinary actions

Deemed RIs should take steps to ensure that their relevant individuals (whether deemed or otherwise) fully understand the implications of non-compliance with the legal and regulatory requirements upon commencement of the new regime. Adequate training must be provided to them in order that they are aware of the range of formal sanctions that they may be subject to in case they breach the requirements, commit misconduct, or are otherwise found to be not fit and proper for engaging in regulated activities.

SFC seminar on the SFO for exempt persons etc

The SFC has been organizing seminars to help intermediaries familiarize themselves with and prepare for the new requirements under the SFO. Two seminars, one in English and one in Chinese, are being planned for early 2003. These will focus on the subsidiary legislation under the SFO and will be open to all exempt persons. You will be advised of the details of the seminars in due course. As those that are exempt persons and intend to register with the SFC under the SFO are strongly encouraged to attend these seminars.

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

Encl.

c.c. The Chairman, HKAB
 The Chairman, DTCA
 SFC (Attn: Mrs Alexa Lam)
 FSTB (Attn: Ms Vivian Lau)

1. ["Banking \(Amendment\) Ordinance 2002 and Securities and Futures Ordinance" issued on 5 July 2002](#) and ["Register of relevant individuals to be maintained by the HKMA under the Banking \(Amendment\) Ordinance 2002" issued on 12 September 2002.](#)
2. ["Subsidiary legislation under the Securities and Futures Ordinance \(SFO\)" issued on 18 November 2002.](#)
3. It should be noted that some of the SFC codes, guidelines and circulars mentioned in the list are subject to revision in the light of the new regime.

Last revision date : 01 August 2011