

BANKING (AMENDMENT) BILL 2000

2. Interpretation

Section 2(1) of the Banking Ordinance (Cap. 155) is  
amended by adding -

\* \* \* \* \*

~~"Securities and Futures Ordinance (— of 2000)" (《證券及期  
貨條例》(2000 年第——號)) means the Ordinance with  
that short title enacted after the introduction of  
the Banking (Amendment) Bill 2000 into the  
Legislative Council;<sup>1</sup>".~~

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<sup>1</sup> Members considered Paper CSAB at the Bills Committee meeting on 10 December 2001 and made no comment on clause 2. Subsequently, the Legal Service Division of the Legislative Council raised the point that it was not necessary to include a reference to the definition of the "Securities and Futures Ordinance". We accept the comment and accordingly propose this deletion.

4. Register of authorized institutions,  
etc.

Section 20 is amended -

(a) in subsection (1) -

\* \* \* \* \*

(ii) by adding -

"(ea) in the case of a registered  
institution, and not later  
than 12 months after the  
commencement of this  
paragraph -

(i) the name and  
business address  
of every relevant  
individual;

(ii) the capacity in  
which every  
relevant  
individual is  
engaged in  
relation to a  
regulated function  
in a regulated  
activity;~~and~~

(iii) the date on which every relevant individual was first so engaged; and";

(iv) such other particulars as the Monetary Authority thinks fit having regard to rules made under section 384 of the Securities and Futures Ordinance ( of 2002) for the purpose of section 133(2) of that Ordinance; and";<sup>2</sup>

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<sup>2</sup> **We briefed Members on this additional amendment to Paper CSAB at the Bills Committee meeting on 10 December 2001. This amendment is proposed in order to enable the HKMA to include, where appropriate, other information in the securities staff register to be maintained under section 20(1)(ea) of the Banking Ordinance, such as the disciplinary history of persons included in the register. This is in line with the arrangement being contemplated by the SFC in respect of its register of licensed persons pursuant to clause 133(2)(e) of the SF Bill.**

(bb) by adding -

"(5A) The fee mentioned in subsection (5) shall not be payable in the case of an inspection, or the obtaining of a copy or an extract, mentioned in that subsection where the register or document concerned is available to the public in the form of an on-line record.-

~~—(a) the inspection is made by the use of an on-line medium;~~

~~—(b) the copy or extract is obtained by the use of an on-line medium."~~<sup>3</sup>

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<sup>3</sup> **Section 20(5) of the Banking Ordinance currently provides that the public may, on payment of the fee specified in the Second Schedule, inspect the register maintained by the Monetary Authority or obtain a copy of an entry/extract from the register, or inspect or obtain a copy of or an extract from any document lodged under section 15(2)(a) of that Ordinance. The original intention was that this fee payment requirement should not apply to cases where the act of inspection or obtaining a copy is conducted through an "on-line medium", so that the public will not be required to pay a fee to inspect the on-line securities staff register. At the meeting on 10 December 2001, Members commented that the term "on-line medium" was not defined. Having reviewed the matter, we propose to redraft section 20(5A) such that the fee payment requirement will not apply where the information requested is available "in the form of an on-line record". The revised wording is in line with clause 133(7) of the SF Bill.**

5. Section added

The following is added in Part X -

"58A. Disciplinary action in respect of relevant individuals

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\_\_\_\_\_ (7) For the purposes of paragraph (b) of the definition of "misconduct" in subsection (6), the Monetary Authority shall not form any opinion that any act or omission is or is likely to be prejudicial to the interest of the investing public or to the public interest, unless it has had regard to such of the provisions set out in any code of conduct published under section 164 of the Securities and Futures Ordinance (\_\_\_\_\_ of 2002) or any code or guideline published under section 385 of that Ordinance as are in force at the time of occurrence of, and applicable in relation to, the act or omission."<sup>4</sup>

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<sup>4</sup> **We briefed Members on this additional amendment to Paper CSAB at the Bills Committee meeting on 10 December 2001. The amendment mirrors the new clause 186(3) of the SF Bill in relation to the definition of "misconduct". It requires the Monetary Authority to have regard to codes and guidelines issued by the SFC before forming an opinion that an act or omission by frontline staff of a registered institution is likely to be prejudicial to the interest of the investing public or to the public interest.**

9. Sections added

The following are added -

"71C. Executive officers of registered institutions require Monetary Authority's consent

\* \* \* \* \*

(10) For the purposes of paragraph (c) of the definition of "misconduct" in subsection (8), the Monetary Authority shall not form any opinion that any act or omission is or is likely to be prejudicial to the interest of the investing public or to the public interest, unless it has had regard to such of the provisions set out in any code of conduct published under section 164 of the Securities and Futures Ordinance ( of 2002) or any code or guideline published under section 385 of that Ordinance as are in force at the time of occurrence of, and applicable in relation to, the act or omission.<sup>5</sup>".

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<sup>5</sup> **We briefed Members on this additional amendment to Paper CSAB at the Bills Committee meeting on 10 December 2001. The amendment mirrors the new clause 186(3) of the SF Bill in relation to the definition of "misconduct". It requires the Monetary Authority to have regard to codes and guidelines issued by the SFC before forming an opinion that an act or omission by an executive officer of a registered institution is likely to be prejudicial to the interest of the investing public or to the public interest.**

## 12. Appeals

Section 132A is amended -

\* \* \* \* \*

(b) by adding -

\* \* \* \* \*

(10) In this section -

“specified decision” (指明決定) means a

decision of the Monetary Authority -

(a) in a notice under section 58A(4) served on the person concerned;

(b) to refuse to grant consent under section ~~71C(2)(a)(1)~~<sup>6</sup>, to attach pursuant to section 71C(2)(b) conditions to such consent, to withdraw or suspend under section 71C(4) such consent, to attach pursuant to section

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<sup>6</sup> **We propose this further amendment to Paper CSAB (considered by Members at the Bills Committee meeting on 10 December 2001) to replace the original reference to “section 71C(2)(a)” with “section 71C(1)” for consistency with the relevant “Specified Decision” in Schedule 7 to the SF Bill.**

71C(5) conditions to such consent or to amend pursuant to section 71C(5) any such conditions; or

- (c) to attach pursuant to section 71E(3) conditions to provisional consent given under section 71E(1) or to amend pursuant to section 71E(3) any such conditions."

Financial Services Bureau  
Hong Kong Monetary Authority  
4 January 2002