

A Bill To

Amend the Banking Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Banking (Amendment) Ordinance 2001.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Financial Services by notice published in the Gazette.

2. Interpretation

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

(a) in subsection (1)---

(i) by repealing the definition of "advertisement" and substituting---  
" "advertisement" (廣告) includes every form of advertising, whether made orally or produced mechanically, electronically, magnetically, optically, manually or by any other means;"

(ii) by repealing the definition of "automated teller machine" and substituting---  
" "automated teller machine" (自動櫃員機) means a terminal device, whether installed by an authorized institution or by some other person, which is linked directly or indirectly to a computer system used by an authorized institution and which provides facilities to customers of the institution;"

(iii) by repealing the definition of "document" and substituting---  
" "document" (文件) includes any publication (including a newspaper, magazine, journal or other periodical publication, a poster or notice, a circular, brochure, pamphlet or handbill, or a prospectus)---  
(a) directed at, or likely to be accessed or read (whether concurrently or otherwise) by, members of the public; and  
(b) whether produced mechanically, electronically, magnetically, optically, manually or by any other means;"

(iv) by repealing the definition of "issue" and substituting---  
" "issue" (發出), in relation to any advertisement, invitation or document, includes publishing, circulating, distributing or otherwise disseminating the advertisement, invitation or document, whether---  
(a) by any visit in person;  
(b) in a newspaper, magazine, journal or other periodical publication;  
(c) by the display of posters or notices;

(d) by means of circulars, brochures, pamphlets or handbills;  
(e) by an exhibition of photographs or cinematography films;  
(f) by way of sound broadcasting or television;  
(g) by computer or other electronic device; or  
(h) by any other means, whether mechanically, electronically, magnetically, optically, manually or by any other medium, or by way of production or transmission of light, image or sound or any other medium,  
and also includes causing or authorizing the advertisement, invitation or document to be issued;"

(v) by repealing the definition of "local branch" and substituting---  
" "local branch" (本地分行), in relation to---

(a) an authorized institution which is a bank, means---

(i) in the case of a bank incorporated in Hong Kong, a place of business thereof in Hong Kong, other than its principal place of business in Hong Kong or any automated teller machine, at which it carries on---

(A) banking business; or

(B) any other business whereby it may incur financial exposure mentioned in section 81(2),

and to which members of the public ordinarily have physical access for the purposes of that business;

(ii) in the case of a bank incorporated outside Hong Kong, a place of business thereof in Hong Kong, other than its principal place of business in Hong Kong or any automated teller machine, at which it carries on---

(A) banking business; or

(B) any other business whereby it may incur financial exposure mentioned in section 81(2),

and to which members of the public ordinarily have physical access for the purposes of that business; and

(b) an authorized institution which is a deposit-taking company or a restricted licence bank, means a place of business in Hong Kong of the deposit-taking company or the restricted licence bank, other than its principal place of business in Hong Kong or any automated teller machine, at which it carries on---

(i) the business of taking deposits; or

(ii) any other business whereby it may incur financial exposure mentioned in section 81(2),

and to which members of the public ordinarily have physical access for the purposes of that business;"

(vi) by repealing the definition of "manager" and substituting---

" "manager" (經理)---

(a) subject to paragraph (c), in relation to an authorized institution incorporated in Hong Kong, means any person, other than a director or chief executive of the institution, appointed by the institution to be principally responsible, either alone or with others, for the conduct of any one or more of the affairs or business of the institution specified in the Fourteenth Schedule;

(b) subject to paragraph (c), in relation to an authorized institution incorporated outside Hong Kong, means any person, other than a chief executive of the institution, appointed by the institution to be principally responsible, either alone or with others, for the conduct of any one or more of the affairs or business in Hong Kong of the institution specified in the Fourteenth Schedule;

(c) does not include a person, or a person belonging to a class of persons, declared in a notice under subsection (14)(cb) not to be a manager, or a class of managers, as the case may be, for the purposes of this definition;"

(vii) by adding---

" "invitation" (邀請) includes an offer and an invitation, whether made orally or produced mechanically, electronically, magnetically, optically, manually or by any other means;

"local office" (本地辦事處), in relation to an authorized institution---

(a) subject to paragraph (b), means a place of business of the institution in Hong Kong from which any business of the institution is promoted or assisted and to which members of the public ordinarily have physical access for the purposes of that business;

(b) does not include---

(i) the institution's principal place of business in Hong Kong;

(ii) a local branch established or maintained by the institution;

(iii) an automated teller machine;

(iv) a place of business of the institution used solely for the purposes of the administration of the affairs or business of the institution or the processing of transactions; or

(v) a place of business of the institution, or a place of business of the institution belonging to a class of places of business, declared in a notice under subsection (14)(ca) not to be a place of business, or a class of places of business, as the case may be, for the purposes of this definition;

"public" (公眾人士) means the public of Hong Kong, and includes any class of that public;

"require" (要求) means reasonably require;"

(b) in subsection (2)---

(i) in paragraph (b), by adding ", invitation or document" after "advertisement";

(ii) in paragraph (c)---

(A) by repealing "or document" where it twice appears and substituting ", invitation or document";

(B) by adding ", invitation or document" after "contains an advertisement";

(iii) in paragraph (d), by adding ", invitation" after "advertisement" where it twice appears;

(c) in subsection (14), by adding---

"(ca) declare a place of business, or a class of places of business, not to be a place of business, or a class of places of business, as the case may be, for the purposes of the definition of "local office";

(cb) declare a person, or a class of persons, not to be a manager, or a class of managers, as the case may be, for the purposes of the definition of "manager";".

### 3. Functions of Monetary Authority

Section 7(2)(b) is amended by adding "local offices," after "local branches,".

### 4. Part heading amended

The heading to Part VIII is amended by adding "Local Offices," after "Local Branches,".

### 5. Control of establishment, etc. of local branches

Section 44 is amended---

(a) by adding---

"(3A) Approval under subsection (1) shall be deemed to have been granted in respect of any local branch falling within paragraph (a)(i)(B) or (ii)(B) or (b)(ii) of the definition of "local branch" lawfully established prior to the commencement of section 2(a)(v) of the Banking (Amendment) Ordinance 2001 ( of 2001).";

(b) in subsections (4) and (5), by adding "or (3A)" after "subsection (3)".

### 6. Fees in respect of local branches

Section 45 is amended by adding---

"(3) An authorized institution that is maintaining, at the commencement of section 2(a)(v) of the Banking (Amendment) Ordinance 2001 ( of 2001), a local branch to which section 44(3A) applies shall, so long as the branch continues to be maintained by the institution, pay to the Director of Accounting Services the fee specified in the Second Schedule on the anniversary in each year of the date on which the institution was authorized.".

7. Section added

The following is added---

"45A. Notification of commencement of business at local offices

(1) An authorized institution shall, not less than 7 days before commencing business at a local office established or maintained by it, give notice in writing to the Monetary Authority of---

(a) the address of the local office;

(b) the nature of the business of the institution to be promoted or assisted from the local office; and

(c) the proposed date of commencement of business at the local office.

(2) Where on the commencement of this section an authorized institution has established or is maintaining a local office at which business has commenced, then the institution shall, not later than 3 months after that commencement, give notice in writing to the Monetary Authority of---

(a) the address of the local office; and

(b) the nature of the business of the institution to be promoted or assisted from the local office.

(3) Every director, every chief executive and every manager of an authorized institution which contravenes subsection (1) or (2) commits an offence and is liable---

(a) on conviction upon indictment to a fine at tier 7; or

(b) on summary conviction to a fine at tier 5,

and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues."

8. Control of establishment, etc. of local representative offices

Section 46 is amended---

(a) by adding---

"(2A) Approval under subsection (1) shall be deemed to have been granted in respect of any local representative office---

(a) which falls within that subsection by virtue of paragraphs (a) and (b)(i) of the definition of "bank" in subsection (9); and

(b) lawfully established prior to the commencement of section 8(c) of the Banking (Amendment) Ordinance 2001 ( of 2001).";

(b) in subsections (4) and (5), by adding "or (2A)" after "subsection (2)";

(c) by repealing subsection (9)(b) and substituting---

"(b) either---

(i) is authorized or recognized as a bank in the place where it is incorporated;  
or

(ii) may, whether or not in or outside the place where it is incorporated, lawfully take deposits from the general public, whether or not on current account."

9. Fees in respect of local representative offices

Section 48 is amended by adding---

"(4) A bank that is maintaining, at the commencement of section 8(c) of the Banking (Amendment) Ordinance 2001 ( of 2001), a local representative office to which section 46(2A) applies shall, so long as the representative office continues to be maintained by the bank, pay to the Director of Accounting Services the fee specified in the Second Schedule on 1 April of each year."

10. Powers of Monetary Authority

Section 52(3D)(b)(ii) is amended by adding "or local office" after "branch".

11. Examination and investigation of authorized institutions, etc.

Section 55(1) is amended by adding "local office," after "local branch,".

12. Production of authorized institution's, etc., books, etc.

Section 56 is amended---

(a) in subsection (1) and the proviso thereto, by adding "local office," after "local branch,";

(b) in subsection (2), by adding "local offices," after "local branches,";

(c) in subsection (3), by adding "local office," after "local branch,".

13. Examination by authorities outside Hong Kong

Section 68(a) is amended by adding "or local office" after "local branch".

14. Restrictions on and sale of shares

Section 70B is amended---

(a) in subsection (10), by adding "(including an order that the holder of the shares shall cause the shares to be transferred to a nominee of the Monetary Authority specified in the order and within the period specified in the order)" after "fit";

(b) in subsection (11), by adding ", unless otherwise specified by the Court of First Instance," after "shall";

(c) by adding---

"(15) It is hereby declared that---

(a) the operation of subsection (3)(b) shall not of itself cause any person to

contravene section 70;

(b) an order under subsection (10) in relation to the shares may be made at the same time as an order under subsection (7) in relation to the shares."

15. Punishment for attempted evasion  
of restrictions

Section 70D(1)(a), (b), (c) and (d) is repealed and the following substituted---

"(a) exercises or purports to exercise any right to dispose of any shares, or of any right to be issued with any such shares, knowing that to do so contravenes any restrictions under section 70B(3) to which the shares are subject;

(b) votes in respect of any such shares as holder or proxy knowing that to do so contravenes any such restrictions;

(c) appoints a proxy in respect of any such shares knowing that to vote in respect of any such shares would contravene any such restrictions;

(d) being the holder of any such shares, fails to notify of their being subject to those restrictions any person whom he does not know to be aware of that fact but does know to be entitled (apart from the restrictions) to vote in respect of those shares whether as holder or as proxy; or

(e) being the holder of any such shares, or being entitled to any right to be issued with other shares in right of them, or to receive any payment on them (otherwise than in a liquidation), enters into any agreement which is void under section 70B(4) or (5),".

16. Section substituted

Section 71 is repealed and the following substituted---

"71. Chief executives and directors  
require Monetary Authority's  
consent

(1) Subject to section 53C(5), no person shall---

(a) become---

(i) the chief executive of an authorized institution; or

(ii) a director of an authorized institution incorporated in Hong Kong,  
without the consent in writing of the Monetary Authority;

(b) if he becomes such chief executive or director without such consent, act or continue to act as such chief executive or director, as the case may be, without such consent;

(c) fail to comply with a condition attached under subsection (2)(b) or (5) as such condition is in force from time to time; or

(d) act or continue to act as such chief executive or director after such consent has been withdrawn under subsection (4).

(2) The Monetary Authority---

(a) shall refuse to give consent under subsection (1) unless the Monetary Authority is satisfied that the person concerned is a fit and proper person to be the chief executive or a director of the authorized institution concerned;

(b) may give consent under subsection (1) subject to such conditions as the Monetary Authority thinks proper to attach thereto for the purpose of securing, or further securing, that the person concerned will continue to be a fit and proper person to be the chief executive or a director of the authorized institution concerned.

(3) Where the Monetary Authority gives consent, or refuses to give consent, under subsection (1), he shall, as soon as is reasonably practicable, thereafter give notice in writing---

(a) in the case of the consent, to the person concerned and the authorized institution concerned and specifying any conditions attached to the consent;

(b) in the case of the refusal, to the person concerned and the authorized institution concerned and specifying his reasons.

(4) Where the Monetary Authority---

(a) has decided that he has ceased to be satisfied that the chief executive or a director of an authorized institution is a fit and proper person to be such chief executive or director;

(b) has given to the chief executive or director not less than 7 days' advance notice of his decision, specifying his reasons, and accompanied by a copy of this section; and

(c) has taken into account any written representation received by him from the chief executive or director,

the Monetary Authority may, by notice in writing served on the chief executive or director and the institution, withdraw the consent.

(5) Where the Monetary Authority---

(a) has decided that he is satisfied that conditions need to be attached to a consent given under subsection (1), or that conditions attached to any such consent need to be amended, for the purpose of securing, or further securing, that the chief executive or director of the authorized institution to whom the consent relates will continue to be a fit and proper person to be such chief executive or director;

(b) has given to the chief executive or director not less than 7 days' advance notice of his decision, specifying his reasons, and accompanied by a copy of this section; and

(c) has taken into account any written representation received by him from the chief executive or director,

the Monetary Authority may, by notice in writing served on the chief executive or



director and the institution, attach conditions to the consent, or amend conditions attached to the consent, as the case may be.

(6) Any person who contravenes subsection (1) commits an offence and is liable--

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(a) on conviction upon indictment to a fine at tier 7 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months, and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues.

(7) A person shall not be regarded for the purposes of subsection (1) as becoming the chief executive or a director of an authorized institution if he is appointed to serve as such chief executive or director immediately on the expiration of a previous term by him as such chief executive or director.

(8) For the purposes of this section, where a person has the consent of the Monetary Authority under subsection (1) to be the chief executive of an authorized institution, and is such chief executive, he is not required to have the consent of the Monetary Authority under subsection (1) to be a director of the institution.

(9) Where immediately before the commencement of section 16 of the Banking (Amendment) Ordinance 2001 ( of 2001) a person had, or was regarded as having, the Monetary Authority's consent ("former consent") under this section as then in force ("former section") to be the chief executive or a director of an authorized institution, then, on and after that commencement---

(a) the former consent shall be deemed to be the Monetary Authority's consent ("deemed consent") under subsection (1) for the person to be that chief executive or director, as the case may be; and

(b) any conditions attached under the former section to the former consent shall be deemed to be conditions attached under subsection (2)(b) to the deemed consent, and subsections (4), (5) and (8) shall apply accordingly."

17. Section added

The following is added---

"72B. Notification of appointment of manager, etc.

(1) An authorized institution shall, not later than 14 days after the date on which a person---

(a) became a manager of the institution;

(b) ceased to be a manager of the institution; or

(c) in his capacity as a manager of the institution, became principally responsible, either alone or with others, for any of the affairs or business of the institution

specified in the Fourteenth Schedule in addition to, or in place of, any other such responsibility he has or had in that capacity,  
give notice in writing to the Monetary Authority of---

(i) that date;

(ii) particulars of the affairs or business of the institution in relation to which the person became or has ceased to be such manager (including any case which falls within paragraph (c)); and

(iii) such other particulars of the person as the Monetary Authority may require for the exercise of his functions under this Ordinance.

(2) Every director, every chief executive and every manager of an authorized institution which contravenes subsection (1) commits an offence and is liable---

(a) on conviction upon indictment to a fine at tier 7 and to imprisonment for 2 years;  
or

(b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months, and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues.".

18. Certain persons prohibited from acting as employees of authorized institutions except with consent of Monetary Authority

Section 73(1)(c) and (1A)(c) is amended by repealing "concerned in the management" and substituting "a chief executive or manager".

19. Section substituted

Section 92 is repealed and the following substituted---

"92. Offence to issue advertisements,  
etc. relating to deposits

(1) Subject to subsection (2), no person shall issue, or have in his possession for the purposes of issue, whether in Hong Kong or elsewhere, an advertisement, invitation or document which to his knowledge is or contains an invitation to members of the public---

(a) to make any deposit; or

(b) to enter into, or offer to enter into, any agreement to make any deposit.

(2) Subsection (1) shall not apply in relation to any advertisement, invitation or document---

(a) to the extent that the advertisement, invitation or document is or contains an invitation to members of the public---

(i) to make a deposit with an authorized institution; or

(ii) to enter into, or offer to enter into, any agreement to make a deposit with an authorized institution;

(b) to the extent to which section 4(1) of the Protection of Investors Ordinance (Cap.

335) does not apply to the advertisement, invitation or document by virtue of section 4(2)(fb), (fc), (g) or (h) of that Ordinance;

(c) to the extent that the advertisement, invitation or document is or contains any prescribed advertisement which complies with the requirements specified in the Fifth Schedule applicable to the prescribed advertisement; or

(d) to the extent that the advertisement, invitation or document relates to the taking of a deposit which is not, by virtue of section 3(1) or (2), a taking to which Part III applies.

(3) Subject to subsection (5), a person who contravenes subsection (1) commits an offence and is liable---

(a) on conviction upon indictment to a fine at tier 7 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months.

(4) For the purposes of any proceedings under this section, an advertisement, invitation or document in which a person named in the advertisement, invitation or document holds himself out as being prepared to take in Hong Kong any deposit shall, subject to subsection (5), be presumed, unless such named person proves to the contrary, to have been issued by him.

(5) A person shall not be taken to contravene subsection (1) in relation to an advertisement, invitation or document to which that subsection applies---

(a) by reason only that he issues, or has in his possession for the purposes of issue, to purchasers, or to members of the public and free of charge, copies of any newspaper, magazine, journal or other periodical publication of general and regular circulation, which contains the advertisement, invitation or document;

(b) by reason only that he issues, or has in his possession for the purposes of issue, the advertisement, invitation or document in the course of providing---

(i) a service which consists of the transmission in a communication network of information provided by a customer or any other independent person; or

(ii) access to such a network;

(c) if he is a person whose business is to issue or arrange for the issue of advertisements and he proves that---

(i) he received the advertisement, invitation or document for issue in the ordinary course of his business;

(ii) the content of the advertisement, invitation or document was wholly devised by a customer of the person or by a person acting on behalf of a customer of his;

(iii) he did not select, modify or otherwise exercise control over the content of the advertisement, invitation or document prior to its receipt or issue; and

(iv) he did not know and had no reason for believing that the issue of the advertisement, invitation or document would constitute an offence; or

(d) if---

(i) he was a broadcaster;

(ii) the advertisement, invitation or document was broadcast live by him as a broadcaster;

(iii) he did not select, modify or otherwise exercise control over the content of the advertisement, invitation or document prior to its broadcast; and

(iv) he has, in relation to the broadcast, acted in accordance with the terms and conditions of the licence, if any, by which he became entitled to broadcast and with any code of practice or guidelines (howsoever described) issued under or pursuant to the Broadcasting Ordinance (Cap. 562) or the Telecommunications Ordinance (Cap. 106) and applicable to him as a broadcaster.

(6) The Monetary Authority may from time to time cause to be prepared and published by notice in the Gazette, for the guidance of persons who issue, or have in their possession for the purposes of issue, advertisements, invitations or documents, guidelines not inconsistent with this Ordinance, specifying the factors the Monetary Authority takes into account to determine whether or not, in his view, an advertisement, invitation or document is an advertisement, invitation or document to which subsection (1) applies.

(7) In this section and the Fifth Schedule---

"broadcast" (廣播), in relation to any material (howsoever described), includes having the information contained in the material broadcast;

"broadcaster" (廣播業者) means a person who lawfully---

(a) establishes and maintains a broadcasting service within the meaning of Part IIIA of the Telecommunications Ordinance (Cap. 106); or

(b) provides a broadcasting service as defined in section 2(1) of the Broadcasting Ordinance (Cap. 562);

"broadcast live" (直播), in relation to any material (howsoever described), means having the material broadcast without its being recorded in advance;

"prescribed advertisement" (訂明廣告) means any advertisement, invitation or document which is or contains an invitation---

(a) to make any deposit outside Hong Kong; or

(b) to enter into, or offer to enter into, any agreement to make any deposit outside Hong Kong."

20. Restrictions on use of name "bank"

Section 97 is amended---

(a) in subsection (1)(i), by repealing "12 months" and substituting "2 years";

(b) by adding---

"(1AA) Where the Monetary Authority gives consent, or refuses to give consent, under subsection (1), he shall, as soon as is reasonably practicable, thereafter give notice in writing of the consent or the refusal to the person who sought the consent and, in the case of the refusal, shall specify his reasons in the notice for the refusal."

21. Defence where director, etc.

prosecuted

Section 126(2) is repealed and the following substituted---

"(2) Subsection (1) shall not apply to an offence under section 18(11), 22(12), 24(12), 25(10), 47(3), 50(6), 53C(14), 53H, 63(7), 64(5), 72A(4), 73(2), 93(1), 97(1), 117(7), 118(5), 120(6), 123, 124 or 125(4)."

22. Appeals

Section 132A(1) is amended---

(a) by repealing paragraph (f) and substituting---

"(f) a refusal to give consent under section 71(1) or 73(1) or (1A), conditions attached under section 71(2)(b) to a consent under section 71(1), the withdrawal under section 71(4) of a consent under section 71(1), conditions attached under section 71(5) to a consent under section 71(1) or the amendment under section 71(5) of any such conditions;"

(b) by adding---

"(fb) a refusal to give consent under section 97(1);"

23. Power to amend Schedules

Section 135(3) is amended by repealing "or Twelfth" and substituting  
", Twelfth or Fourteenth".

24. Consequential amendments to principal

Ordinance arising from the fact that

new definition of "manager" does

not include chief executive

(1) Sections 12(6), 14(5), 16(8), 18(9) and (10), 20(7) and (8), 22(10) and (11), 24(10) and (11), 25(8) and (9), 44(8), 47(4), 49(8), 50(4) and (5), 51A(8), 52(4), 56(2) and (3), 59(5), 59A(3), 60(9) and (10), 63(5) and (6), 64(4) and (6), 65(2), 66(2), 67(2), 69(4), (5) and (6), 70D(2), 72A(6), 74(2), 80(3), 81(9), 83(7), 85(3), 86(5), 87(3), 87A(7), 88(6), 90(3), 91(3), 95(3), 96(3), 99(3), 100(5), 103(3), 104(5), 106(4) and 132(3) are amendeded by adding ", every chief executive" after "director" wherever occurring.

(2) Section 64(1)(b) is amended by repealing "or manager of the institution" and substituting ", chief executive or manager of the institution".

(3) Section 123 is amended by adding "chief executive," after "director,".

(4) Section 60A(3) of this Ordinance as amended by section 6 of the Banking (Amendment) Ordinance 1999 (42 of 1999) is amended by adding ", every chief executive" after "director".

#### 25. Fees

The Second Schedule is amended---

(a) in items 9 and 11, by repealing "45(1) and (2)" and substituting "45(1), (2) and (3)";

(b) in item 13, by repealing "and (3)" and substituting ", (3) and (4)".

#### 26. Requirements applicable to prescribed advertisements

The Fifth Schedule is amended by repealing "[ss. 92(5)(c)" and substituting "[ss. 92(2)(c)".

#### 27. Minimum criteria for authorization

The Seventh Schedule is amended by adding---

"5A. The Monetary Authority is satisfied that the company has, and will if it is authorized continue to have, adequate systems of control to ensure that each person who is, or is to be, a manager of the company is a fit and proper person to hold the particular position which he holds or is to hold."

#### 28. Powers of Manager of authorized institution

The Ninth Schedule is amended, in paragraph 6(b), by adding "or local office" after "branch".

#### 29. Fourteenth Schedule added

The following is added---

"Fourteenth Schedule [ss. 2, 72B & 135(3)]

Affairs or Business of Authorized Institutions Specified for Purposes of Definition of "Manager"

##### 1. In this Schedule---

"banking or other financial services" (銀行或其他財務服務) includes the taking of deposits, the provision of payment and remittance services, the issuance of credit, debit or multi-purpose cards, facilities for the purchase or sale of foreign currencies, securities or other financial instruments, the provision of financial advice and the incurring of financial exposure mentioned in section 81(2) of this Ordinance;

"corporate banking" (公司銀行業務), in relation to an authorized institution, means the provision by the institution of banking or other financial services to companies, but does not include such services so provided as part of the institution's retail banking;

"institutional banking" (機構銀行業務), in relation to an authorized institution, means the provision by the institution of banking and other financial services to authorized institutions, banks incorporated outside Hong Kong which are not authorized institutions or other financial institutions;

"international banking" (國際銀行業務), in relation to an authorized institution incorporated in Hong Kong, means the provision of banking or other financial services through overseas offices or subsidiaries of the institution;

"private banking" (私人銀行業務), in relation to an authorized institution, means the provision by the institution of banking or other financial services to individuals who are considered by the institution to be of high net worth, but does not include such services so provided as part of the institution's retail banking;

"retail banking" (零售銀行業務), in relation to an authorized institution, means the provision by the institution of banking or other financial services to individuals, firms, partnerships, unincorporated businesses or companies;

"treasury" (財政管理), in relation to an authorized institution, means the management by the institution of the liquidity and funding of the institution and the trading of foreign currencies, securities or other financial instruments.

2. The carrying on of business of any of the following descriptions or of any of their equivalents within an authorized institution---

(a) retail banking;

(b) private banking;

(c) corporate banking;

(d) international banking;

(e) institutional banking;

(f) treasury; or

(g) any other business which is material to the institution.

3. The maintenance of the accounts or the accounting systems of an authorized institution.

4. The maintenance of systems of control of an authorized institution, including those systems intended to manage the risks of the institution.

5. The maintenance of systems of control of an authorized institution to protect it against involvement in money laundering.

6. The development, operation and maintenance of computer systems for an authorized institution.

7. The conduct of internal audits or inspections of the institution's affairs or business.

8. The function of ensuring that an authorized institution complies with laws, regulations or guidelines that are applicable to it."

#### Explanatory Memorandum

The object of this Bill is to amend the Banking Ordinance (Cap. 155) to---

(a) expand the definition of "local branch" in section 2(1) (see clause 2(a)(v)) to include any place of business in Hong Kong at which an authorized institution carries on any business (not being banking business) whereby it may incur financial exposure mentioned in section 81(2). Clauses 5, 6 and 25(a) make consequential amendments to sections 44 and 45 and the Second Schedule respectively;

(b) introduce a new section 45A (see clause 7) to require an authorized institution to give the Monetary Authority certain information in relation to local offices established or maintained by the institution (see the new definition of "local office" at clause 2(a)(vii)). Clauses 3, 10, 11, 12, 13 and 28 make consequential amendments to sections 7(2)(b), 52(3D)(b)(ii), 55(1), 56 and 68(a) and the Ninth Schedule respectively;

(c) expand the definition of "bank" in section 46(9) (see clause 8(c)), which relates to the control of the establishment of local representative offices in Hong Kong, to include a bank which is authorized or recognized as a bank in the place where it is incorporated notwithstanding that it does not take deposits from the general public. Clauses 8(a) and (b), 9 and 25(b) make consequential amendments to sections 46 and 48 and the Second Schedule respectively;

(d) empower the Court of First Instance to require a minority or majority shareholder controller of an authorized institution who is in contravention of, inter alia, section 70(3) to transfer specified shares held by the controller to a nominee of the Monetary Authority (see clause 14(a)). Clause 14(b) and (c) makes consequential amendments to section 70B. Clause 15 makes minor technical amendments to section 70D;

(e) repeal section 71 and introduce a new section 71 (see clause 16). The new section 71 principally differs from the repealed section 71 in that the Monetary Authority shall refuse to give consent for a person to become the chief executive of an authorized institution, or a director of an authorized institution incorporated in Hong Kong, unless the Monetary Authority is satisfied that the person is a fit and proper person to be such chief executive or director. The Monetary Authority is also required to specify his reasons when refusing to give consent. Clause 22 makes a consequential amendment to section 132A(1)(f);

(f) introduce a new section 72B to require an authorized institution to, inter alia, give notice in writing to the Monetary Authority where a person becomes or ceases



to be a manager of the institution (see clause 17). The new definition of "manager" at clause 2(a)(vi) should be noted together with the new section 2(14)(cb) at clause 2(c) and the new Fourteenth Schedule at clause 29. It should also be noted that, in relation to an authorized institution incorporated outside Hong Kong, the new definition of "manager" only extends to the affairs or business in Hong Kong of the institution (see paragraph (b) of that definition). Clauses 23 and 27 make consequential amendments to section 135(3) and the Seventh Schedule respectively. Clause 24 amends a number of provisions in view of the fact that the new definition of "manager" does not include the chief executive of an authorized institution;

- (g) repeal and replace section 92 to clarify the meaning of the section, and to cover the situation where advertisements for making deposits are provided by new technological means, in particular the internet (see clause 19 and the new definitions of "advertisement", "document", "issue", "invitation" and "public" at clause 2(a)(i), (iii), (iv) and (vii)). The sanctions at the new section 92(3) are brought into line with those in the existing section 95(3). The Monetary Authority's power at the new section 92(6) to issue guidelines should also be noted;
- (h) bring the sanction at section 97(1)(i) into line with the sanction at existing section 95(3)(a) (see clause 20(a));
- (i) enable a person to appeal against a decision of the Monetary Authority to refuse to grant consent under section 97(1) for a person to, inter alia, use the word "bank" in the description or name under which the person is carrying on business in Hong Kong (see clauses 20(b) and 22); and
- (j) repeal section 126(2) and replace it with a new section 126(2) in order to ensure that there is a consistent rationale supporting the basis on which the offence provisions mentioned in the new section are excluded from the benefit of the defence provision in section 126(1) (see clause 21).