

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 2000.

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

" "declaration of exemption" (豁免書) means a declaration of exemption---

(a) granted under section 118 of the Securities and Futures Ordinance (of 2000); and

(b) which is in force;

"executive officer" (主管人員), in relation to an exempt authorized institution, means an executive officer appointed under section 71D in respect of the institution;

"exempt authorized institution" (獲豁免認可機構) means an authorized institution---

(a) to which section 25(a) or 32 of Schedule 9 to the Securities and Futures Ordinance (of 2000) applies; or

(b) granted a declaration of exemption;

"regulated activity" (受規管活動), in relation to an exempt authorized institution, means a regulated activity---

(a) within the meaning of Schedule 1 to the Securities and Futures Ordinance (of 2000); and

(b) in respect of which the institution is exempted from the requirement to hold a licence---

(i) within the meaning of that Schedule;

(ii) to carry on the activity; and

(iii) by virtue of---

(A) in the case of an institution falling within paragraph (a) of the definition of "exempt authorized institution", section 25(a) or 32 of Schedule 9 to the Securities and Futures Ordinance (of 2000);

(B) in any other case, the declaration of exemption granted to it;

"Securities and Futures Commission" (證監會) means the Securities and Futures Commission referred to in the Securities and Futures Ordinance (of 2000);

"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;".

3. Functions of Monetary Authority

Section 7(2) is amended---

(a) in paragraph (e), by repealing "and" at the end;

(b) in paragraph (f), by repealing the full stop and substituting
"; and";

(c) by adding---

"(g) take all reasonable steps to ensure that any banking business, any business of taking deposits, or any other business, carried on by an authorized institution is carried on---

(i) with integrity, prudence and the appropriate degree of professional competence; and

(ii) in a manner which is not detrimental, or likely to be detrimental, to the interests of depositors or potential depositors."

4. Register of authorized institutions, etc.

Section 20 is amended---

(a) in subsection (1)---

(i) in paragraph (e), by repealing "and" at the end;

(ii) by adding---

"(ea) in the case of an exempt authorized 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 employed in relation to a regulated function in a regulated activity; and

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

(b) by repealing subsections (3) and (4) and substituting---

"(3) The Monetary Authority may require an authorized institution (including an authorized institution seeking to be an exempt authorized institution) or local representative office to submit such information for the purposes of subsection (1) as he may reasonably require in order to maintain the register in so far as it relates to that authorized institution or local representative office, as the case may be, and such information shall be submitted within such period and in such manner as the Monetary Authority may require.

(4) Where any information submitted to the Monetary Authority under subsection (3) changes subsequent to the submission, the authorized institution or local representative office which submitted the information shall give notice in writing to the Monetary Authority of such change---

(a) subject to paragraph (b), not later than 21 days after such change takes place;

(b) where subsection (1)(ea) is applicable, within 7 business days after such change

takes place.

(4A) For the purposes of enabling any member of the public to ascertain whether a person he is dealing with is a relevant individual in relation to an exempt authorized institution and, if so, the capacity in which the relevant individual is employed in relation to a regulated function in a regulated activity and the date on which the relevant individual was so employed, the information contained in the register under subsection (1)(ea) shall be made available to public inspection under subsection (5).";

(c) in subsection (7), by repealing "a bank, deposit-taking company or restricted licence bank" and substituting "an authorized institution";

(d) in subsection (8)---

(i) by repealing "bank, local representative office, deposit-taking company or restricted licence bank" and substituting "authorized institution or local representative office";

(ii) by repealing "bank, deposit-taking company or restricted licence bank" and substituting "authorized institution";

(e) by adding---

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

(a) the fact that an authorized institution falls within section 26(a) or 33 of Schedule 9 to the Securities and Futures Ordinance (of 2000) is not a ground for the institution to fail to comply with a requirement under subsection (3) seeking the submission of information for the purposes of subsection (1)(ea), and subsections (4), (7) and (8) shall be construed accordingly;

(b) the fact that a relevant individual falls within section 26(a) or 33 of Schedule 9 to the Securities and Futures Ordinance (of 2000) shall not prohibit the inclusion in the register of any information referred to in subsection (1)(ea) relating to the individual.

(10) In this section---

"business day" (營業日) means any day other than---

(a) a public holiday; or

(b) a gale warning day or a black rainstorm warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

"regulated function" (受規管職能), in relation to a regulated activity, means any function (other than work ordinarily performed by a clerk, cashier or accountant) of the exempt authorized institution concerned in that regulated activity;

"relevant individual" (有關人士), in relation to an exempt authorized institution, means an individual who is employed by the institution to perform for or on behalf of the institution any regulated function in a regulated activity.".

5. Section added

The following is added in Part X---

"58A. Reprimand in respect of exempt authorized institution

(1) Subject to subsections (2) and (3), where an exempt authorized institution is, or has at any time been, guilty of misconduct, the Monetary Authority may publicly or privately reprimand the institution.

(2) The Monetary Authority shall not exercise his power under subsection (1) against an exempt authorized institution without first giving the institution an opportunity of being heard.

(3) Where the Monetary Authority decides to exercise his power under subsection (1) against an exempt authorized institution, the Monetary Authority shall inform the institution of his decision to do so by notice in writing served on it, and the notice shall include---

(a) a statement of the reasons for which the decision is made; and

(b) a statement advising that the decision shall take effect on the date---

(i) the institution serves a notice in writing on the Monetary Authority stating that it does not propose to appeal under section 132A(2A) against the decision;

(ii) the period specified in the Administrative Appeals Rules (Cap. 1 sub. leg.) within which the institution may appeal under section 132A(2A) against the decision expires without any such appeal having been made; or

(iii) an appeal under section 132A(2A) by the institution against the decision is unsuccessful,
whichever first occurs.

(4) In this section---

"exempt authorized institution" (獲豁免認可機構) includes a company which is a former exempt authorized institution where the company was an exempt authorized institution at the time when the company was guilty of misconduct, and section 132A(2A) shall be construed accordingly;

"misconduct" (失當行爲), in relation to an exempt authorized institution, means--

(a) a contravention of any of the relevant provisions of the Securities and Futures Ordinance (of 2000) which are applicable to the institution;

(b) a contravention of any of the terms and conditions of a declaration of exemption;

(c) a contravention of any other condition imposed under any provision of the Securities and Futures Ordinance (of 2000); or

(d) an act or omission relating to the carrying on of any regulated activity by the institution which, in the opinion of the Monetary Authority, is or is likely to be

prejudicial to the interest of the investing public or to the public interest, and "guilty of misconduct" (犯失當行爲) shall be construed accordingly.

(5) For the avoidance of doubt, it is hereby declared that the power under this section of the Monetary Authority to reprimand an authorized institution is in addition to any other power of the Monetary Authority, whether under this Ordinance or otherwise and whether explicit or implicit, to reprimand an authorized institution (and whether or not the institution is an exempt authorized institution).".

6. Section added

The following is added---

"59B. Notification by authorized institution of end of financial year, etc.

(1) An authorized institution shall---

(a) in the case of an institution which was authorized before the commencement of this section, not later than 1 month after that commencement;

(b) in any other case, not later than 1 month after the date on which it was authorized, give notice in writing to the Monetary Authority of the date on which its financial year ends.

(2) An authorized institution shall not---

(a) alter the date on which its financial year ends as specified in its notice under subsection (1) except with the approval under subsection (3)(a) of the Monetary Authority;

(b) have its financial year exceed 12 months except with the approval under subsection (3)(b) of the Monetary Authority.

(3) The Monetary Authority may, on the application of an authorized institution, by notice in writing served on the institution---

(a) approve an alteration of the date on which its financial year ends subject to such conditions as the Monetary Authority thinks fit specified in the notice;

(b) approve a financial year of more than 12 months for the institution subject to such conditions as the Monetary Authority thinks fit specified in the notice.

(4) Every director and every manager of an authorized institution which contravenes subsection (1) or (2), or any condition specified in a notice under subsection (3), commits an offence and is liable---

(a) on conviction upon indictment to a fine at tier 7 and to imprisonment for 2 years and, in the case of a contravention of subsection (1), to a further fine at tier 3 for every day for which the institution fails to give the notice required under that subsection to the Monetary Authority; or

(b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months and, in the case of a contravention of subsection (1), to a further fine at tier 2 for

every day for which the institution fails to give the notice required under that subsection to the Monetary Authority."

7. Returns and information to be submitted to the Monetary Authority

Section 63(3A)(b)(iii) and (3E) is repealed.

8. Section added

The following is added---

"63A. Auditor to report to Monetary Authority any matter which adversely affects financial position of authorized institution to material extent

(1) Where a person in the course of performing his duties as an auditor appointed under---

(a) section 59(2) or 63(3) or (3A); or

(b) section 131 of the Companies Ordinance (Cap. 32),

becomes aware of a matter which, in his opinion, adversely affects the financial position of an authorized institution to a material extent, he shall, as soon as is reasonably practicable after he becomes aware of the matter, submit to the Monetary Authority a report in writing on the nature of the matter and the reason why he is of that opinion.

(2) In relation to any authorized institution incorporated outside Hong Kong, subsection (1) shall only apply to its principal place of business in Hong Kong and its local branches, and shall do so as if that principal place of business and those branches were collectively a separate authorized institution."

9. Sections added

The following are added---

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

(1) Subject to sections 71E and 71F, no person shall---

(a) become an executive officer of an exempt authorized institution without the consent in writing of the Monetary Authority;

(b) if he becomes such executive officer without such consent, act or continue to act as such executive officer 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 executive officer 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---

(i) is a fit and proper person to be an executive officer of the exempt authorized institution concerned;

(ii) is competent to carry out the duties of such executive officer; and

(iii) has sufficient authority within the institution to be such executive officer;

(b) may give consent under subsection (1) subject to such conditions as the Monetary Authority thinks proper to attach thereto.

(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 exempt authorized institution concerned and specifying any conditions attached to the consent;

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

(4) Where the Monetary Authority---

(a) has decided that he has ceased to be satisfied that an executive officer of an exempt authorized institution---

(i) is a fit and proper person to be such executive officer;

(ii) is competent to carry out the duties of such executive officer; or

(iii) has sufficient authority within the institution to be such executive officer;

(b) has given to the executive officer 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 executive officer,

the Monetary Authority may, by notice in writing served on the executive officer 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;

(b) has given to the executive officer 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 executive officer,

the Monetary Authority may, by notice in writing served on the executive officer 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---

(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 an executive officer of an exempt authorized institution if he is appointed to serve as an executive officer of it---

(a) immediately on the expiration of a previous term by him as an executive officer; and

(b) in relation to the same regulated activity as he was such executive officer in that previous term.

71D. Appointment of executive officers

(1) Subject to section 71F, every exempt authorized institution shall appoint not less than 2 executive officers---

(a) in the case of an institution---

(i) incorporated in Hong Kong, to be responsible for directly supervising the conduct of the business conducted by the institution that constitutes a regulated activity;

(ii) incorporated outside Hong Kong, to be responsible for directly supervising the conduct of the business in Hong Kong conducted by the institution that constitutes a regulated activity; and

(b) each of whom shall be an individual.

(2) Every director and every manager of an exempt authorized institution which contravenes subsection (1) commits an offence and is liable on conviction upon indictment or 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.

71E. Grant of provisional consent in relation to persons seeking Monetary Authority's consent under section 71C(1) to be executive officers

(1) Where a person seeks the consent under section 71C(1) of the Monetary Authority to be an executive officer of an authorized institution, then the Monetary Authority may, upon the request of the person, and in his absolute discretion but subject to subsection (2), give provisional consent to the person to be such executive officer.

(2) The Monetary Authority shall refuse to give provisional consent under

subsection (1) to a person unless the person satisfies the Monetary Authority that the giving of the consent will not prejudice the interests of---

(a) depositors or potential depositors of the exempt authorized institution concerned; and

(b) the investing public.

(3) The Monetary Authority may give provisional consent under subsection (1) to a person subject to such conditions as the Monetary Authority thinks proper to attach thereto, and the Monetary Authority may at any time, by notice in writing served on the person and the exempt authorized institution concerned, attach conditions to the consent or amend conditions attached to the consent, as the case may be.

(4) A provisional consent given under subsection (1) to a person shall be deemed to be revoked when the person and the exempt authorized institution concerned are given notice under section 71C(3) of the Monetary Authority's decision to give, or refuse to give, consent under section 71C(1) for the person to be an executive officer of the institution.

(5) The Monetary Authority may, having regard to the interests of the depositors or potential depositors of the exempt authorized institution concerned or of the investing public, and in his absolute discretion, withdraw provisional consent given under subsection (1) to a person by giving notice in writing to the person and the institution withdrawing the consent.

71F. Transitional provisions in relation to sections 71C and 71D in the case of certain exempt authorized institutions

Neither section 71C nor section 71D shall apply to or in relation to an exempt authorized institution during the period within which the institution falls within paragraph (a) of the definition of "exempt authorized institution".

10. Monetary Authority may require specified persons to submit information

Section 72A(1) is amended---

(a) in paragraph (b), by adding "or an executive officer of an exempt authorized institution" after "institution";

(b) in paragraph (d), by adding "or 71C(1)" after "71(1)".

11. Official secrecy

Section 120 is amended---

(a) in subsection (5), by adding---

"(fa) to the disclosure of information by the Monetary Authority to the Securities and Futures Commission relating to---

(i) the carrying on of a regulated activity by an exempt authorized institution;
or

(ii) the carrying on by an authorized institution of the business of receiving or holding client assets, within the meaning of Schedule 1 to the Securities and Futures Ordinance (of 2000), of intermediaries, within the meaning of Schedule 1 to that Ordinance, of which the institution is an associated entity within the meaning of Schedule 1 to that Ordinance;"

(b) in subsection (5A)(b), by repealing "證券及期貨事務監察委員會" and substituting "證監會";

(c) in subsection (5C), by adding ", (fa)" after "(f)";

(d) by adding---

"(8) For the avoidance of doubt, it is hereby declared that subsection (1) does not apply to a reprimand under section 58A."

12. Appeals

Section 132A is amended---

(a) in subsection (1)---

(i) in paragraph (d), by adding ", 59B(3)" after "51A(2)";

(ii) by adding---

"(ea) any conditions to which an approval under section 59B(3) is made subject by the Monetary Authority under that section;"

(iii) by adding---

"(fa) a refusal to grant consent under section 71C(1), conditions attached under section 71C(2)(b) to such consent, the withdrawal under section 71C(4) of such consent, conditions attached under section 71C(5) to such consent or the amendment of any such conditions under section 71C(5);"

(b) by adding---

"(2A) Any exempt authorized institution aggrieved by a decision in a notice under section 58A(3) served on it may appeal to the Chief Executive in Council against the decision."

13. Minimum criteria for authorization

The Seventh Schedule is amended---

(a) in paragraph 4, by repealing "or chief executive" and substituting ", chief executive or executive officer";

(b) in paragraph 5(a), by adding ", or executive officer," after "chief executive";

(c) in paragraph 12, by adding "(including any business which is not banking business or the business of taking deposits)" after "business".

14. Grounds for revocation of authorization

The Eighth Schedule is amended by adding---

"15A. A person has become or continues to be an executive officer of the authorized institution in contravention of section 71C."

Explanatory Memorandum

The principal purpose of this Bill is to amend the Banking Ordinance (Cap. 155) to provide for the regulation of authorized institutions in relation to any business conducted by them for which they are exempted from licensing under the Securities and Futures Bill to be introduced into the Legislative Council on 29.11.2000. The provisions of this Bill are, of course, contingent on the passage into law and the final enacted form of the Securities and Futures Bill.

2. Clause 2 amends section 2 to introduce new definitions necessitated by the amendments made by clauses 3 to 14. The definitions of "exempt authorized institution" and "regulated activity" identify the authorized institution which is exempted from licensing under the Securities and Futures Bill and the activity to which the exemption relates.

3. Clause 3 amends section 7(2) to put it beyond doubt that the Monetary Authority's regulatory powers extend to business conducted by authorized institutions which is not banking business or the business of taking deposits.

4. Clause 4 amends section 20 to require the Monetary Authority to keep a register of persons employed by exempt authorized institutions to act for them in respect of their regulated activities.

Clause 5 introduces a new section 58A to empower the Monetary Authority to publicly or privately reprimand an exempt authorized institution which is guilty of misconduct. (See the definition of "misconduct" in new section 58A(4)). An appeal may be made against the decision to issue a reprimand (clause 12(b)).

6. Clause 6 introduces a new section 59B to require an authorized institution to notify the Monetary Authority of the date on which its financial year ends. It should be noted that the institution is prohibited from altering its financial year, or having its financial year exceed 12 months, except with the approval of the Monetary Authority. An appeal may be made against a refusal to give an approval (clause 12(a)(i)).

7. Clause 8 introduces a new section 63A to require an auditor to report to the Monetary Authority any matter of which he becomes aware, during the course of performing his duties as an auditor, which in his opinion adversely affects the financial position of an authorized institution to a material extent. Clause 7 consequentially repeals section 63(3A)(b)(iii) and (3E) as that section is superseded by the new section 63A.

8. Clause 9 introduces new sections 71C, 71D, 71E and 71F. New section 71C requires the Monetary Authority to consent to a person becoming an executive officer of an exempt authorized institution. (See the definition of "executive officer" in clause 2). An appeal may be made against a refusal to give the consent (clause 12(a)(iii)).

Clauses 10, 13(a) and (b) and 14 make consequential amendments to section 72A(1), the Seventh Schedule and the Eighth Schedule respectively.

9. New section 71D requires an exempt authorized institution to appoint not less than 2 executive officers. New section 71E empowers the Monetary Authority to give a person provisional consent to be an executive officer of an exempt authorized institution pending the determination of the person's application seeking consent under new section 71C(1) to be such executive officer. New section 71F is a transitional provision disapplying new sections 71C and 71D to exempt authorized institutions during the period within which the institutions fall within paragraph (a) of the definition of "exempt authorized institution".

10. Clause 11(a) amends section 120(5) to enable the Monetary Authority to disclose to the Securities and Futures Commission information relating to, inter alia, the carrying on of a regulated activity by an exempt authorized institution.