

立法會
Legislative Council

LC Paper No. LS30/00-01

**Paper for the House Committee Meeting
of the Legislative Council
on 1 December 2000**

**Legal Service Division Report on
Banking (Amendment) Bill 2000**

Object of the Bill

To amend the Banking Ordinance (Cap. 155) ("BO") :-

- (a) to add to the function of the Monetary Authority ("MA") the regulation of business conducted by authorized institutions ("AI") which is not banking business or the business of taking of deposits;
- (b) to impose a duty on MA to keep a register of persons employed by and acting for exempt AI in their regulated activities;
- (c) empower the MA to publicly or privately reprimand exempt AI;
- (d) to enable MA to regulate the financial year end of AI;
- (e) to require an auditor to report to MA any matter that adversely affects to a material extent the financial position of an AI;
- (f) to provide for matters relating to the approval by MA, and the appointment by AI, of executive officers; and
- (g) to empower MA to disclose information relating to exempt AI and their regulated activities.

LegCo Brief Reference

2. G4/16/20C (2000) issued by the Financial Services Bureau on 10 November 2000.

Date of First Reading

3. 29 November 2000.

Comments

4. The Administration has decided that upon the commencement of the new licensing regime after enactment of the Securities and Futures Bill ("SFB") (introduced into the Legislative Council on 29 November 2000), MA shall be the front line regulator of all exempt AI which undertake activities regulated by the Security and Futures Commission ("the Commission"). The Administration considers it necessary to amend BO so that MA would be in a position to perform its envisaged role consistent with the standards applied by the Commission.

5. A table showing the correlation between provisions of the Bill and those of SFB is set out in the attached Schedule. It appears that the enactment of SFB must precede this Bill. It is also apparent that those provisions of the Bill, which are depending on the provisions of SFB, would only have meaning when those related provisions of SFB are finalized.

6. On the question of whether there may be danger that the provisions in this Bill may deviate from the related provisions of SFB in such a way that it would result in different standards being applied to exempt AI on the one hand and licensed persons regulated by the Commission on the other, it would be fairly remote for such danger to be present in respect of clauses 1, 2, 3, 4(e), 7, 9, 10-14 of the Bill.

Public Consultation

7. According to the LegCo Brief, the Banking Advisory Committee, the Deposit-taking Companies Advisory Committee, the Hong Kong Association of Banks, the Deposit-taking Companies Association and the Hong Kong Society of Accountants have been consulted. They are generally supportive of the legislative proposals and their comments have been taken into account.

Consultation with LegCo Panel

8. Members of the Panel for Financial Affairs have been briefed on 10 November 2000 of the legislative proposal.

Recommendation

9. The Bill constitutes a part of the implementation of the SFB in relation to AI. The proposals affect the interests of the authorised financial institutions. Member may wish to set up a Bills Committee to study the Bill in detail. The Legal Service Division is still scrutinizing the Bill and will seek clarification from the Administration on the drafting and legal aspects of the Bill.

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SCHEDULE

Correlation between Banking (Amendment) Bill 2000 and Securities and Futures Bill

Banking (Amendment) Bill Clause reference	Related Securities and Futures Bill Clause reference	Comments on Correlation
2 "Declaration of exemption"	118	The definitions in question depends on the existence of the provisions in SFB. No question of departing from the SFB provisions.
2 "exempted authorised institution"	section 25(a) or 32 of Schedule 9	Ditto
2 "regulated activity"	Schedule 1, section 25(a) or 32 of Schedule 9	Ditto
2 "Securities and Futures Ordinance (of 2000)"	The Ordinance	The definition depends on the enactment of SFB. No question of departing from the SFB provisions.
3	Nil	No correlation.
4(a) to (d)	133	The provisions put MA in the same position in respect of individuals employed to act for the exempt AI performing a regulated function in a regulated activity as the Commission to the licensed persons. There is no textual dependance but they are related in "spirit".
4(e)	section 26(a) or 33 of Schedule 9	The paragraph depends on the provisions in SFB. No question of departing from the provisions in SFB.

5	187(1)(iii)	The Commission has power to publicly or privately reprimand a regulated person under clause 187(1)(iii) of SFB. Under BO, the Monetary Authority does not have that power. Hence the need for clause 5.
5 "misconduct"	Part XIII	The definition depends on the provisions of SFB. No question of departing from the SFB provisions.
6	151	They are similar provisions. The purpose of this clause is to subject AI to the same duties in relation to financial year end as the licensed corporations and their associated entities, etc.
7	Nil	No correlation
8	153	The matter an auditor should report to the Monetary Authority under this provision is similar to one of the "reportable matter" defined in clause 153(3) of SFB.

9	124	The provisions contained in clause 9 (proposed sections 71C, 71D, 71E & 71F of BO) do not refer to any provisions in SFB but clause 124(2) of SFB expressly refers to the proposed sections 71C, 71D & 71E. The provisions of clause 9 empower the MA to consent to executive officers of exempt AI and provide for the procedures, the appointment of such officers and penalties for contravention and the grant of provisional consent. The effectiveness of clause 124(2) of SFB depends on the provisions of this clause. Without clause 9, AI would not be able to lawfully carry on the regulated activities.
10	Nil	No correlation
11	Schedule 1	The provisions presume the enactment of SFB. No question of departing from the SFB provisions.
12	Nil	No correlation
13	Nil	Ditto
14	Nil	Ditto