

LEGISLATIVE COUNCIL BRIEF

BANKING ORDINANCE

(DECLARATION UNDER SECTION 2(14)(b)) NOTICE 2001

INTRODUCTION

The Hong Kong Monetary Authority (HKMA) will publish the Banking Ordinance (Declaration under Section 2(14)(b)) Notice 2001, at Annex A, in the Gazette on 28 December 2001.

BACKGROUND AND ARGUMENT

2. In 1997, the HKMA introduced a legal framework for the approval and supervision of money brokers operating in the interbank foreign exchange and deposit markets. Under the framework, no person shall act as a money broker unless that person is approved by the HKMA as a money broker under the Banking Ordinance (the Ordinance). Under section 2 of the Ordinance, “money broker”, in short, means a person who for reward, carries on the business in or from Hong Kong, or provides to persons in Hong Kong the service, of negotiating, arranging or facilitating, whether by electronic means or otherwise, agreements between other persons in respect of –

- (a) the making of a deposit of any currency;
- (b) the purchase or sale of any currency; or
- (c) the purchase or sale of an instrument declared in a notice under section 2(14)(a) of the Ordinance by the HKMA (a complete definition of money broker is at Annex B).

3. However, it has been brought to the notice of the HKMA that persons, who provide the service of negotiating, arranging, or facilitating agreements for syndicated loans or debt securities and thereby receive a fee for such service, may also be caught by the definition of

“money broker” inadvertently¹. As the regulatory framework for money broker is not intended to cover the arranging of syndicated loans or the issue of debt securities, it is proposed that a declaration notice be issued to exclude persons who merely engage in such activities from the definition of “money broker”.

THE NOTICE

4. Under section 2(14)(b) of the Ordinance, the HKMA may, by notice in the Gazette, declare a person not to be a money broker for the purposes of the definition of “money broker”.

5. The proposed Notice to be issued by the HKMA will declare that a person is not a money broker by reason only that he negotiates, arranges or facilitates –

- (a) the syndication of loans under which two or more persons provide credit or lend money to one or more other persons;
or
- (b) the issue of debt securities.

LEGISLATIVE TIMETABLE

6. The proposed Notice is a piece of subsidiary legislation and will be tabled at the Legislative Council on 9 January 2002 for negative vetting.

BASIC LAW IMPLICATIONS

7. The Department of Justice advises that the proposed Notice is consistent with the Basic Law.

HUMAN RIGHTS IMPLICATIONS

8. The Department of Justice advises that the proposed Notice has no human rights implications.

¹ This is because “deposit” as currently defined in the Banking Ordinance includes a loan of money and debt securities in respect of which no prospectus has been registered under the Companies Ordinance.

BINDING EFFECT OF THE LEGISLATION

9. The proposed Notice will not affect the current binding effect of the existing provisions of the Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

10. There are no financial and staffing implications for the Government.

PUBLIC CONSULTATION

11. We have consulted the Hong Kong Association of Banks (HKAB) and the DTC Association (DTCA). They have raised no objection to the legislative proposal.

PUBLICITY

12. The HKMA will inform the HKAB and the DTCA upon commencement of the Notice.

ENQUIRIES

13. Enquiries on this brief may be directed to Ms Kinnie Wong, Assistant Secretary (Banking and Monetary), Financial Services Bureau (telephone number: 2527 3974).

**Financial Services Bureau
December 2001**

**BANKING ORDINANCE (DECLARATION UNDER SECTION 2(14)(b))
NOTICE 2001**

(Made under section 2(14)(b) of the Banking Ordinance (Cap. 155))

1. Declaration

It is declared that a person is not a money broker for the purposes of the definition of "money broker" by reason only of his negotiating, arranging or facilitating, whether by electronic means or otherwise, any or both of the following -

- (a) the syndication of loans under which two or more persons provide credit or lend money to one or more other persons; or
- (b) the issue of debt securities.

Monetary Authority

2001

Explanatory Note

This Notice declares that a person is not a money broker for the purposes of the definition of "money broker" in section 2(1) of the Banking Ordinance (Cap. 155) by reason only of his negotiating, arranging or facilitating -

- (a) certain loan arrangements; or
- (b) the issue of debt securities.

Banking Ordinance - Section 2(1)

“money broker” -

- (a) subject to paragraph (b), means a person who, for reward (whether by way of commission, fees or otherwise), carries on the business in or from Hong Kong, or provides to persons in Hong Kong the service, of negotiating, arranging or facilitating, whether by electronic means or otherwise, agreements between other persons -
 - (i) in respect of -
 - (A) the making of a deposit of any currency;
 - (B) the purchase or sale of any currency, and whether or not the currency the subject of the purchase or sale is to be received or delivered immediately or at any future time or upon the happening of any future occurrence; or
 - (C) the purchase or sale of an instrument, or an instrument belonging to a class of instruments, declared in a notice under subsection 14(a) to be an instrument, or a class of instruments, as the case may be, for the purposes of this definition;
 - (ii) one of which is an authorized institution; and
 - (iii) as agent for, or as the provider of a dealing service to, not less than one of those persons;
- (b) does not include an authorized institution or -
 - (i) subject to paragraph (c), a person acting as a money broker where the person is so acting wholly ancillary or incidentally to a business carried on by the person which, if the business is, or were to be, carried on in or from Hong Kong, is not, or would not be, as the case may be, the

- business of acting as a money broker; or
- (ii) a person, or a person belonging to a class of persons, declared in a notice under subsection (14)(b) not to be a person, or a class of persons, as the case may be, for the purposes of this definition;
 - (c) includes a person, or a person belonging to a class of persons, declared in a notice under subsection (14)(c) to be a person, or a class of persons, as the case may be, to whom paragraph (b)(i) shall not apply;

Banking Ordinance - Section 2(14)

(14) The Monetary Authority may, by notice in the Gazette, and subject to such conditions, if any, as are specified in the notice -

- (a) declare an instrument, or a class of instruments, to be an instrument, or a class of instruments, as the case may be, for the purposes of the definition of “money broker”;
- (b) declare a person, or a class of persons, not to be a money broker, or a class of money brokers, as the case may be, for the purposes of the definition of “money broker”;
- (c) declare a person, or a class of persons, to be a person, or a class of persons, as the case may be, to whom paragraph (b)(i) of the definition of “money broker” shall not apply;
- (d) declare a stored value card, or a class of stored value cards, not to be a stored value card, or a class of stored value cards, as the case may be, for the purposes of the

definition of “multi-purpose card”.

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