

## CHAPTER 8

### APPLICATION PROCEDURES

- 8.1 This chapter sets out the procedures for applying for authorization under section 16 of the Ordinance. An applicant must be a body corporate.

#### **Preliminary consultation with the MA**

- 8.2 Institutions which are proposing to apply for authorization or upgrading of their existing authorization are encouraged to discuss their plans with the MA before submitting a formal application although they are not required to do so. Such preliminary discussions are useful in ensuring that the prospective applicant is fully aware of the requirements and procedures for authorization. This has proved helpful in avoiding the premature submission of a formal application and in shortening the time required to process an application.
- 8.3 An institution which maintains a local representative office<sup>1</sup> (LRO) or is an existing authorized institution should find it helpful to discuss its plans for authorization or upgrading of existing authorization with the case team responsible for supervising the institution and seek advice on the matter before proceeding further with the plan.
- 8.4 An institution which does not have any presence in Hong Kong as an authorized institution or LRO may discuss its intentions for authorization with the Licensing Team of the HKMA responsible for authorization matters.

#### **Submission of application**

- 8.5 As noted above, an applicant may find it helpful to discuss matters relating to its proposed application including its timing with the MA before making a formal application. Under section 15 of the Ordinance, an application for authorization must be lodged with a copy of the memorandum and articles of association or other documents constituting the applicant company, and such other documents and information as may be required by the MA. Annex 2 sets out a list of documents which are required to be submitted with the formal application. The directors, controllers and chief executive (including alternates) of an institution which is incorporated or to be incorporated in Hong Kong, and the chief executive (including alternates) of the Hong Kong operations of an institution which is incorporated outside Hong Kong, are required to complete questionnaires regarding their background.

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<sup>1</sup> For definition of local representative office, please see paragraph 2.13.

- 8.6 Applicants are required to submit a business plan for the first three years of operation of the proposed branch or subsidiary in Hong Kong. The business plan should describe the nature and scale of business to be undertaken and business strategies to be adopted, as well as details of the proposed management, organisational structure and control systems. It should also include financial projections for the first three years of the operation, including the projected balance sheet, capital adequacy and liquidity ratios and profitability. While the financial projections are not intended to be precise forecasts, they should give a realistic picture of the proposed scale of business of the applicant and the expected financial performance. In general, applicants are not expected to depart radically from their business plans in the first years of operation as an authorized institution; if such a departure is proposed, the authorized institution should consult with the MA in advance.
- 8.7 Where the applicant intends to conduct regulated activities under the SFO and apply for registration as a registered institution or apply for addition of regulated activities subsequently after registration, the MA may require the applicant to provide an Independent Assurance Report (IAR) on the applicant's fitness and propriety and whether the applicant is competent to carry on the regulated activities applied for, with reference to the relevant provisions in the SFO and the Ordinance, and also the applicable rules, codes, guidelines and circulars issued by the SFC and the MA. Likewise, where the applicant or an existing authorized institution intends to carry on regulated activities under the IO in a line of business and applies for an insurance intermediary licence, or applies for a variation of a line of business specified in its existing insurance intermediary licence, the MA may require an IAR from the applicant or the existing authorized institution on its fitness and propriety and whether the applicant or the existing authorized institution is competent to carry on regulated activities under the IO in the line of business applied for with reference to the relevant statutory requirements as well as regulatory requirements issued by the IA and the MA. The IAR should be prepared by an external professional firm which is acceptable to the MA. This will normally be required for an applicant or an existing authorized institution that is new to a line of business in the securities and futures market or the insurance market (as the case may be) of Hong Kong or in cases regarded as especially complex.
- 8.8 To better identify lines of responsibility and accountability within the proposed registered institution, the applicant is expected to identify at least one individual as principally responsible for the overall management of the whole business of the proposed registered institution (generally the chief executive) as well as managing each of the businesses or functions listed in paragraphs 2 to 8 of the Fourteenth Schedule to the Ordinance, to the extent that these individuals are involved in the management of the business constituting any regulated activities for which the proposed registered institution is registered. In this connection, relevant information on individuals identified as principally responsible for regulated activity business should be submitted to the HKMA in support of the application, together with an organisation chart depicting the proposed registered institution's management and governance structure relevant to its regulated activity business. Details are set out in the circular [“Management Accountability at Registered Institutions”](#) issued by the HKMA on 16 October 2017.

- 8.9 The MA may also seek such additional information from the applicant as is necessary for him to reach a decision on the application. The circumstances of each particular application will dictate what additional information is required. If, for example, the applicant is a part of a financial conglomerate, the MA may require information to enable him to assess any risks arising from the operations of other companies within the group. The MA may require the applicant to provide a report by an accountant or other professional experts on the information provided.
- 8.10 As noted in Chapter 4, the MA must be satisfied that he knows the identity of each controller of an authorized institution. Applicants must therefore be prepared to supply this information.
- 8.11 An institution which wishes to clarify the information which should be provided to the MA may consult the Licensing Team of the HKMA.

### **Processing of applications**

- 8.12 Every effort will be made to process applications quickly consistent with the essential checking and due diligence required. Delays are sometimes encountered because applications submitted are incomplete or because applicants are unable to supply supplementary information requested by the MA in good time. Since there is invariably a queue of applications under processing at any time, delays to one application may have a knock-on effect on others. The MA therefore adopts the following procedures to minimise delays and facilitate the allocation of resources -
- (a) Applications will only be treated as formally received when the application form with all documents and information listed in Annex 2 is properly completed and submitted. The applicant will be informed in writing that the application will be treated as formal and the processing of the application will begin.
  - (b) Where an application received is incomplete or supporting documents or information are lacking, making it difficult for the MA to perform an assessment against the licensing criteria set out in the [Seventh Schedule](#) to the Ordinance, the applicant will be informed in writing that the application will be treated as draft and will be asked to complete the application or provide the missing information by a date specified by the MA. Once a properly completed application with all necessary supporting documents and information is received, the applicant will be notified in writing that application will be handled as formal and the processing of the application will begin.
  - (c) Where information requested is not received by the specified date or a revised date agreed in writing by the MA at the request of the applicant, the application may be treated as suspended and the applicant will be notified of this in writing.
  - (d) Even when properly completed applications are received, it is almost always necessary for the MA to seek further information from applicants as part of the processing. Requests for such information will generally state a time by which the information should be submitted. It is essential that applicants respond to

such requests in good time and delays will inevitably affect processing of the application. Where information requested is not received by the date stated in the request, or a revised date agreed in writing by the MA at the request of the applicant, the application may be treated as suspended.

- (e) From time to time, applicants themselves may not be ready to proceed with an application for their own business reasons. In such cases, the applicant should inform the MA that it wishes to suspend the application, giving an indication of when they intend to reactivate it. Such voluntary suspensions will assist the MA in allocating its resources more efficiently and every effort will be made to proceed with the application quickly after reactivation, although updating of information submitted is likely to be required.
- (f) Where an application is suspended, the applicant will be informed in writing that processing will cease temporarily and resources allocated to other applications. Suspended applications will be reactivated when the outstanding information is submitted or when the applicant indicates that it wishes to reactivate the application (if the suspension is voluntary). Applicants should note that, depending on the length of the suspension, it may be necessary to update information previously submitted when the application is reactivated. In some cases, this will effectively mean a fresh application.
- (g) Where an application is suspended for 6 months or more for any reason, a fresh application will generally be required if the applicant wishes to pursue the matter further.

### **Home Regulator's Approval**

- 8.13 Applicants from outside Hong Kong will generally require the approval of their home regulators for establishing a presence in Hong Kong. Obtaining such approval is the responsibility of the applicant and the MA will not assist in this process.
- 8.14 The MA recognises that it is not always possible for applicants who require their home regulator's approval to obtain it before submitting their application. Applications received without such approval having been obtained in advance will therefore not normally be held in abeyance for that reason, although they will be treated as draft if they are not complete in other ways. However, since delays in obtaining home regulator's approval may result in delays in processing the application, it is in the applicant's interest to obtain such approval before applying wherever possible. Applicants should always inform their home regulator of their intention to apply for authorization in Hong Kong and, if formal approval cannot be obtained, consider obtaining an in-principle approval or statement of no objection from the home regulator first. In any event, they should seek formal approval from their home regulator in parallel with their application and give an indication of when such approval is expected to be obtained when submitting their application.
- 8.15 If the home regulator's approval is delayed for any reason for more than 3 months from the date of formal application, unless otherwise agreed with the MA, it may be

necessary to treat the application as suspended and the arrangements in paragraphs 8.12 (f) and (g) will apply.

### **Consultation with home supervisor**

- 8.16 Where the applicant is a bank incorporated outside Hong Kong, the MA will confirm with the relevant banking supervisory authority that it has given consent for the applicant to establish a branch or subsidiary in Hong Kong.
- 8.17 As detailed in Chapter 4 of the Guide, the MA is required to satisfy himself about such matters as the financial soundness of an applicant and whether its directors, controllers, chief executive (including alternates) and executive officers (where applicable) are fit and proper. In relation to an applicant which is a bank incorporated outside Hong Kong, the MA will take account of the views of the relevant banking supervisory authority in respect of such matters and will wish to satisfy himself regarding the adequacy of the supervision exercised by that authority. For the latter purpose, the supervisory authority may be asked to provide written information about its supervisory regime and practices. Reluctance or delay on the part of the authority in question to provide such information will make it more difficult for the MA to satisfy himself with regard to the matters specified in the [Seventh Schedule](#). It is important therefore that applicants should consult their own supervisory authorities prior to submitting an application to the MA.

### **Consideration of the application**

- 8.18 All formal applications for authorization will be considered by a Banking Supervision Review Committee (BSRC) comprising senior officers of the HKMA and chaired by the Deputy Chief Executive (Banking). The BSRC is responsible for considering and making recommendations to the MA on authorization matters under the Ordinance.
- 8.19 If the MA decides to grant authorization, the applicant will be notified in writing. The authorization shall be effected, as the case may be, by the MA granting a banking licence, restricted banking licence or registering the applicant as a deposit-taking company. Under section 19 of the Ordinance, the relevant fee is payable to the Director of Accounting Services within 14 days after the date on which the institution was authorized. The name and address of the principal place of business in Hong Kong of a newly authorized institution are entered in the register maintained by the MA under section 20 of the Ordinance and notice of that entry is published in the Gazette under section 21 of the Ordinance as soon as reasonably practicable thereafter.
- 8.20 Before exercising his power to refuse to grant an authorization, the MA is required to give the applicant the opportunity of being heard. If the MA decides to refuse to grant authorization, he must notify the applicant in writing of the reasons. As described in Chapter 4, an applicant aggrieved by a refusal (or by conditions attached to an authorization) may appeal to the Chief Executive in Council against such decisions.

### **Estimated time to process an application**

- 8.21 The MA aims to process applications for authorization as quickly as possible. However, the time required to process an application will depend on the particular circumstances of each application, including the completeness of information and quality of documents (e.g. on internal control policies) submitted to the MA by the applicant. For overseas applicants, the time taken by the relevant banking supervisory authority of the applicant to respond to the MA's enquiries will also affect the processing time.