

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.