



Supervisory Policy Manual

TM-E-2

**Regulation of Advertising Material for
Deposits Issued over the Internet**

V.1 – 24.05.02

This module should be read in conjunction with the [Introduction](#) and with the [Glossary](#), which contains an explanation of abbreviations and other terms used in this Manual. If reading on-line, click on blue underlined headings to activate hyperlinks to the relevant module.

Purpose

To specify, in pursuance of §92(6), the factors the MA takes into account in determining whether, in his view, internet advertising material for deposits is advertising material to which §92(1) of the Banking Ordinance applies

Classification

A statutory guideline issued by the MA under the Banking Ordinance, §92(6)

Previous guidelines superseded

This is a new guideline.

Application

To all persons who issue, or have in their possession for the purposes of issue, advertising material for deposits over the internet

Structure

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1. Introduction

1.1 Terminology

1.1.1 In this module terms are used with the following meanings:

- "advertiser" means the person who issues advertising material;
- "advertising material" includes any advertisement, invitation or document as defined in §2 of the Banking Ordinance. Advertising material for deposits refers to advertising material which is or which contains an invitation to members of the public to make any deposit; or to enter into, or offer to enter into, any agreement to make any deposit;
- "hyperlink" means either a picture or text on a web page which provides an electronic link to a web page of the same or another site;
- "internet" refers to:
 - the international computer network consisting of many individual computers and computer systems connected by telecommunications circuits; and
 - any other similar or electronic means or media where appropriate;



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- "internet advertising material" means advertising material issued over the internet;
- "issue" in relation to any advertising material follows the definition in §2 of the Banking Ordinance. It includes, for example, publishing, circulating, distributing or otherwise disseminating advertising material by any means and also includes causing or authorizing advertising material to be issued;
- "prescribed advertisement" follows the definition in §92(7) of the Banking Ordinance. It means any advertisement, invitation or document which is or contains an invitation:
 - to make any deposit outside Hong Kong; or
 - to enter into, or offer to enter into, any agreement to make any deposit outside Hong Kong;
- "search engine" means an internet facility designed to assist users to search for information over the internet based on specified keywords. Usually search engines maintain indices of web site addresses to facilitate searching; and
- "targeted at Hong Kong" means targeted at members of the public in Hong Kong, irrespective of the delivery media used for dissemination of advertising material.

1.2 §92 of the Banking Ordinance

1.2.1 Under §92(1), subject to certain exceptions as specified in the Banking Ordinance, no person shall issue, or have in his possession for the purposes of issue, whether in Hong Kong or elsewhere, advertising material which to his knowledge is or contains an invitation to members of the public:

- to make any deposit; or
- to enter into, or offer to enter into, any agreement to make any deposit.



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1.2.2 §92(1) does not apply, inter alia, in relation to any advertising material:

- to the extent that the advertising material is or contains an invitation to members of the public:
 - to make a deposit with an AI; or
 - to enter into, or offer to enter into, any agreement to make a deposit with an AI; or
- to the extent that the advertising material is or contains any prescribed advertisement which complies with the requirements specified in the Fifth Schedule¹ applicable to the prescribed advertisement.

1.2.3 It should be stressed that §92 does not provide for an approval mechanism for the MA to approve the issue of advertising material to which §92(1) applies. The onus is on the advertiser to comply with the requirements in §92. Subject to §92(5), a person who contravenes §92(1) commits an offence and is liable to a fine and imprisonment.

1.3 Legal status

1.3.1 This module does not have the force of law and does not override the relevant provisions in the Banking Ordinance.

1.3.2 It should be emphasised that interpretation of §92 is ultimately a matter for the Courts. In case of doubt, potential advertisers or any other persons who are unsure about their position under §92 should consider seeking their own legal advice to ensure compliance with the applicable law.

1.4 Future developments

¹ This refers to the Fifth Schedule of the Banking Ordinance. A prescribed advertisement complying with the Fifth Schedule shall include, among other information, a prominent warning to the effect that the deposit-taker is not an AI and is therefore not subject to the supervision of the MA and certain specified information about the deposit-taker and the deposit product being advertised. The objective is to ensure that material facts are available in the prescribed advertisement to enable prospective depositors in Hong Kong to make their own judgement about placing a deposit with the deposit-taker.



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1.4.1 The MA will keep this module under regular review in the light of technological developments and any other international regulatory initiatives in this area.

2. General principles

2.1 The internet permits members of the public in Hong Kong to gain access to a wide variety of advertising material for banking services and products across different jurisdictions. The MA has no intention of impeding technological development and innovation in relation to internet advertising material.

2.2 Nevertheless the relevant provisions in the Banking Ordinance seek to ensure that members of the public in Hong Kong who may have access to internet advertising material for deposits are appropriately protected, as with similar advertising material issued through physical media² (e.g. paper-based magazines, newspapers, journals and other periodical publications of general and regular circulation).

3. Relevant factors considered by the MA

3.1 Categories of factors considered

3.1.1 The MA will consider the following factors when determining whether internet advertising material for deposits is targeted at Hong Kong:

- factors relating to the way in which the advertising material is promoted or the web site on which the material is posted (see subsection 3.2 below for examples);
- factors relating to the content of the advertising material or the site (see subsection 3.3 below for examples); and
- factors relating to precautionary steps implemented by the advertiser (see subsection 3.4 below for examples).

² It is generally easier to determine whether advertising material for deposits issued through a physical medium is targeted at Hong Kong. Therefore there seems to be no need to issue a separate guideline in respect of such media for the time being.



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3.1.2 The factors stated in this module are neither exhaustive nor conclusive. The absence or presence of any factor may not necessarily lead the MA to consider that particular internet advertising material is targeted at Hong Kong. The MA will judge each case on its merits and take into account the particular circumstances and all relevant facts.

3.2 Promotion of advertising material or site

3.2.1 In determining whether internet advertising material for deposits on a certain site is presented or provided in such a manner that it appears to be targeted at Hong Kong, the MA will consider all relevant factors including, in particular, the following:

- whether the advertising material is targeted, via “push” techniques, at a group or groups of people whom the advertiser knows, or should reasonably know, reside in Hong Kong. “Push” techniques include spamming, broadcasting or directing information to a particular person or group of people through, for instance, e-mails;
- whether any news group, bulletin board, chat room or similar facility associated with the site has been used to promote the deposit-taking service in Hong Kong; and
- in the case of advertising material hosted on a site:
 - whether the site's existence has been included in a Hong Kong search engine or the Hong Kong section of a search engine;
 - whether the site has been advertised in Hong Kong through advertising agencies, in periodicals (e.g. newspapers, journals or electronic publications³) or by broadcasting (e.g. television, satellite or radio⁴); and

³ Unless the publication is principally for circulation outside Hong Kong.

⁴ Unless the broadcasting is principally for reception outside Hong Kong.



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- whether a third-party site that is targeted at Hong Kong has hyperlinks to the advertising site.

3.3 Content of advertising material or site

3.3.1 In determining whether the content of advertising material for deposits is written in a manner which gives an impression that the subject service is targeted at members of the public in Hong Kong, the MA will consider all relevant factors including, in particular, the following:

- whether the advertising material contains a disclaimer which is viewed with or before the advertising material and is visible using the same web page format as for the rest of the site;
- whether the disclaimer states clearly that:
 - deposits will only be taken from certain jurisdictions (and, if so, whether Hong Kong is included in the list of such jurisdictions); or
 - deposits will not be taken from certain jurisdictions (and, if so, whether Hong Kong is included in the list of such jurisdictions). A disclaimer that simply states in general terms that no deposit is intended to be taken from those jurisdictions where it is not authorized or permitted without specification of the excluded jurisdictions will not be considered by the MA as sufficient; and
- whether the content of the advertising material is written in a manner that seems targeted at Hong Kong, e.g. where:
 - the advertising material can be read in the Chinese language;
 - the advertiser uses a name or domain name that may give the impression that the advertiser is established in Hong Kong;



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- the advertising material indicates that Hong Kong dollar deposits⁵ will be accepted;
- contact details of any persons, agents, correspondents or other parties in Hong Kong are given in the advertising material for the purpose of enquiries; or
- the content is of specific relevance to potential Hong Kong depositors (e.g. if the Hong Kong identity card numbers of depositors are requested) or the advertising material includes specific information about, or references to, Hong Kong (e.g. economic or financial indicators, market trends and analysis of Hong Kong).

3.4 Precautions implemented by advertiser

3.4.1 In determining whether reasonable precautions have been taken by the advertiser to avoid taking deposits from members of the public in Hong Kong as a result of advertising material for deposits issued over the internet, the MA will consider all relevant factors including, in particular, the following:

- whether reasonable precautions⁶ are in place to avoid the advertising material being made available or accessible to persons in Hong Kong; and
- whether the advertiser has systems in place to avoid taking deposits from persons residing in Hong Kong, e.g. where the system would reject any depositor with a correspondence address in Hong Kong.

⁵ It should be noted that acceptance of deposits in currencies other than Hong Kong dollars will not necessarily lead the MA to the view that the advertising material is not targeted at Hong Kong, as it is not uncommon for persons in Hong Kong to place deposits in foreign currencies.

⁶ Precautions may include a pre-registration process (and the issuing of passwords) to ensure that only targeted groups are granted access.



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4. Enforcement of §92

4.1 Decisions on enforcement and prosecution

4.1.1 A decision to take enforcement action will depend upon the facts of the particular case and the extent to which the advertising material is targeted at Hong Kong.

4.1.2 The decision to prosecute a contravention of the Banking Ordinance rests with the Secretary for Justice, who will take into account the recommendation of the MA. In formulating a recommendation the MA will generally have regard to any steps which the advertiser has taken to avoid breaches of the law.

4.2 Advertising material hosted overseas

4.2.1 In the cases of internet advertising material for deposits hosted overseas and targeted at Hong Kong, the MA would seek assistance from the relevant overseas supervisory authorities to help enforce the provisions of §92. If the overseas authorities are not cooperative or are unable to assist for any reason, the MA will consider taking some or all of the following actions:

- issuing a press release stating that the advertising material is not in compliance with §92 and advising members of the public in Hong Kong to take extra care in placing deposits with the deposit-taker concerned; or
- taking the refusal to cooperate into account when considering the adequacy of home supervision in connection with any future application from an entity based in such jurisdiction for authorization in Hong Kong.

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