

## CHAPTER 2

### THE AUTHORIZATION REGIME

#### The requirement for authorization

- 2.1 Institutions which intend to carry on banking business or the business of taking deposits in Hong Kong are required to be authorized by the MA under section 16(1) of the Ordinance. Sections 11(1) and 12(1) prohibit respectively the carrying on of banking business except by a bank authorized under the Ordinance, and the carrying on of the business of taking deposits except by an authorized institution. An “authorized institution” may be a bank<sup>1</sup>, a restricted licence bank (RLB) or a deposit-taking company (DTC).
- 2.2 For the purpose of the Ordinance, “banking business” is defined in section 2 as the business of either or both of the following -
- (a) receiving from the general public money on current, deposit, savings or other similar account repayable on demand or within less than 3 months or at call or notice of less than 3 months; or
  - (b) paying or collecting cheques drawn by or paid in by customers.

where “deposit” -

- (a) means a loan of money -
  - (i) at interest, at no interest or at negative interest; or
  - (ii) repayable at a premium or repayable with any consideration in money or money’s worth; but
- (b) does not include a loan of money -
  - (i) upon terms involving the issue, by any company, of debentures or other securities in respect of which a prospectus has been registered under the Companies Ordinance (Cap. 32);
  - (ii) upon terms referable to the provision of property or services; or
  - (iii) by one company to another (neither company being an authorized institution) at a time when one is a subsidiary of the other or both are subsidiaries of another company.

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<sup>1</sup> In this Guide, unless the context requires otherwise, the term “bank” is used to refer to a bank which has been authorized under section 16 of the Ordinance.

- 2.3 The question of what constitutes the carrying on of a business of taking deposits is generally a matter to be decided on the basis of the facts of each individual case. The term “business” can generally be said to refer to activity of a systematic and repetitive nature. In this respect, section 12(8) specifies that if a person took deposits on at least 5 separate occasions within any period of 30 days, that person shall, in the absence of evidence to the contrary, be deemed to have been carrying on a business of taking deposits.
- 2.4 Section 3(1) of the Ordinance specifies categories of non-authorized persons who are not subject to the restriction on the taking of deposits in section 12(1). Section 3(2) specifies categories of persons from whom deposits may be taken without breaching section 12(1).
- 2.5 Non-authorized institutions are also subject to restrictions on the use of banking names and descriptions (including internet domain names) under section 97. The relevant provisions are described in Chapter 7.
- 2.6 In addition, advertising material (i.e. advertisements, invitations or documents, including those on websites) that solicits deposits from members of public in Hong Kong is subject to section 92. This section does not prohibit advertising material in respect of deposits to be placed outside Hong Kong. However, such material has to comply with the disclosure requirements specified in the Fifth Schedule of the Ordinance. Section 92 does not provide a mechanism for the MA to approve the issue of advertising material to solicit deposits from members of the public in Hong Kong. The onus is on the relevant persons to comply with the requirements in that section.

### **The three-tier system**

- 2.7 As mentioned above, Hong Kong maintains a three-tier system of authorized institutions, namely banks, RLBs and DTCs.
- 2.8 Only banks may carry on “banking business” as defined above. Thus, only banks may operate current and saving accounts, accept deposits of any size and maturity from the public and pay or collect cheques drawn by or paid in by customers. Banks may therefore engage in the full range of retail and wholesale banking business.
- 2.9 RLBs may not carry on “banking business”, but may take call, notice or time deposits from the public in amounts of HK\$500,000 and above without restriction on maturity. RLBs generally engage in such activities as merchant banking and capital market operations.
- 2.10 DTCs are restricted to taking deposits of HK\$100,000 or above with an original term to maturity, or call or notice period, of at least three months. They are generally engaged in a range of specialized activities, including consumer finance, trade finance, or securities business.

- 2.11 In line with the policy which has been applied since 1981, the MA will generally require that applicants for RLB and DTC status which are incorporated in Hong Kong are at least 50% owned by a bank (or, exceptionally, another financial institution) which is adequately supervised.

### **Form of market entry**

- 2.12 An overseas applicant seeking a banking licence in Hong Kong can in practice enter only in the form of a branch (see paragraph 4.82(c))<sup>2</sup>. An RLB presence may be in the form of either a branch or a subsidiary. Since 1977, it has been the practice to grant DTC registrations only in respect of locally incorporated subsidiaries.

### **Local representative offices**

- 2.13 A bank incorporated outside Hong Kong may apply to the MA for approval for the establishment of a local representative office (LRO) under section 46(1).
- 2.14 A LRO is required to operate from only one business location and to confine its customer business to representational and liaison activities. Such activities may include marketing of the bank's services to customers in Hong Kong and acting as a channel of communication between these customers and the rest of the bank. It must not however engage in banking business or in any financial activities of a type or nature that are normally transacted between a bank and its customers, including the receiving of deposits; granting of loans; drawing, accepting, endorsing or discounting bills of exchange; establishing letters of credit; buying and selling of foreign exchange; or transacting remittance business.
- 2.15 Under section 46(3) of the Ordinance, the MA shall not approve an application for a LRO unless he is satisfied that the bank is adequately supervised by the relevant banking supervisory authority (i.e. pursuant to section 2(9) the authority which has a supervisory responsibility for the applicant - usually this will be the home supervisor in the place where the applicant is incorporated). The factors which the MA takes into account in considering the adequacy of home supervision are described in paragraph 4.7 of the Guide.

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<sup>2</sup> However, subject to the MA's approval, an overseas incorporated bank may convert its branch operations in Hong Kong into a subsidiary provided that it has been authorized to conduct banking business in Hong Kong for not less than 3 continuous years and its Hong Kong operations meet the balance sheet criteria for local bank applicant specified in Paragraph 13 of the Seventh Schedule (see paragraph 4.82).