

## CHAPTER 7

### RESTRICTION ON USE OF BANKING NAMES AND DESCRIPTIONS

#### Introduction

- 7.1 Under section 97(1) of the Ordinance, it is an offence for any person, other than a bank (i.e. one which is authorized under the Ordinance) or a central bank, without the written consent of the MA -
- (a) to use the word “bank” or any of its derivatives in English, or any translation thereof in any other language, or use the Chinese expression “ngan hong” (銀行), or use the letters “b”, “a”, “n”, “k” in that order, in the description or name under which such person is carrying on business in Hong Kong; or
  - (b) to make any representation in any bill head, letter paper, notice, advertisement or in any other manner that such person is a bank or is carrying on banking business in Hong Kong.
- 7.2 The MA considers that a “banking name or description” which falls within the scope of Section 97(1)(a) includes a company’s internet domain name and logo.
- 7.3 Section 97(1) provides that the consent of the MA may be granted generally, or in any particular case or class of case. Section 97 also contains a number of exemptions from the general restriction. This chapter sets out such exemptions and the MA’s policy in respect of consents under section 97(1).

#### Exemptions provided under the Ordinance

- 7.4 Section 97 provides certain exemptions from the general restriction under section 97(1)(a). These include -
- (a) a LRO of a bank incorporated outside Hong Kong may use the name of that bank, or a translation of it, in the name under which the LRO is carrying on its functions and activities in Hong Kong, provided that the name is used in immediate conjunction with, and is not more prominent than, the term "representative office" in the same language (section 97(1A));
  - (b) any association of banks or association of employees of banks formed for the protection or promotion of mutual interests of its members, is exempt from section 97 (section 97(2));
  - (c) a RLB may use a specified term, as defined in section 97(6), such as “restricted licence bank” or “merchant bank” in the description under which it

is carrying on the business of taking deposits in Hong Kong (section 97(3)); and

- (d) a RLB branch of a bank incorporated outside Hong Kong may use the name of that bank, or a translation of it, in the name under which it carrying on the business of taking deposits in Hong Kong, provided that the name is used in immediate conjunction with, and is not more prominent than, the term "restricted licence bank" in the same language (section 97(4)).

## **Consent of MA**

7.5 As noted above, section 97(1) provides for the MA to give written consent for the use of the word "bank". Such consent may be given generally or in any particular case or class of case.

### General consent

7.6 The following general consent under section 97(1) was given by the MA on 9 April 2002 –

“A company which is a subsidiary, the holding company, or a subsidiary of the holding company of a bank may use the name of that bank in the name or description under which it is carrying on business in Hong Kong. However, this is subject to the following conditions:

- (a) In the case of a restricted licence bank (RLB) incorporated in Hong Kong which is a subsidiary of a bank,
  - (i) such name -
    - (A) must be used in immediate conjunction with the term “restricted licence bank” in the same language as such name (which term, in the case of Chinese, shall be “有限制牌照銀行”); and
    - (B) must not be more prominent than such term; and
  - (ii) such description must be solely for the purpose of indicating the connection between the RLB and the bank.

Thus, for example, a RLB subsidiary of ABC Bank may describe itself as “ABC Bank (Asia) Ltd, a restricted licence bank” or “ABC (Asia) Ltd, a subsidiary of ABC Bank” or “ABC Bank (Asia) Ltd, a restricted licence bank wholly owned by ABC Bank”.

(b) In any other case –

- (i) the use of the bank's name must be solely for the purpose of indicating the connection between the company and the bank. Thus, for example, a company may describe itself as "ABC (Asia) Ltd, a subsidiary of ABC Bank". It cannot however use the name "ABC Bank (Asia) Ltd" because this does not indicate the nature of the connection between the company and its parent. A non-bank holding company may however use the name "XYZ Bank Holding Company Ltd" because this clearly shows the nature of the connection between the company concerned and its subsidiary XYZ Bank Ltd;
- (ii) where the bank in question is incorporated outside Hong Kong and is not authorized under the Banking Ordinance, the bank must be subject to adequate supervision by the relevant banking supervisory authority (which will normally be the supervisory authority in the place where it is incorporated). This condition can be assumed to be satisfied in relation to a banking supervisor which is presently the relevant authority for one or more banks which have an authorized presence (in the form of a branch or a subsidiary) or local representative office (LRO) in Hong Kong (even if the particular bank whose name is to be used does not itself have such a presence or LRO). In any other case, a company wishing to use the name of a bank in the name or description under which it is carrying on business in Hong Kong must seek the specific consent of the Monetary Authority under section 97(1)."

### Specific consent

- 7.7 Any non-bank company which wishes to use the word "bank" in its business name or description should seek the specific consent of the MA if it cannot take advantage of the exemptions or general consent set out in the preceding paragraphs. In November 2000, the MA issued a [Guideline on "Specific Consent under Section 97\(1\) of the Banking Ordinance"](#). This provides guidance on the MA's policy on the granting of specific consent for the use of banking names or descriptions by companies (or other persons) who are not banks. In general, the policy is that the MA will not give his consent where the proposed name or description could mislead the public into believing that the company in question is, or may be, a bank or is under the direct supervision of a banking supervisor.
- 7.8 As set out in paragraph 5 of the Guideline, the MA, in exercising discretion whether to grant consent, will take into account the following criteria:
- a) the extent to which the banking name or description is indicative of banking activity and therefore its use could mislead the public into thinking that the company is a bank;

- b) the nature of the business actually carried on by the company, i.e. whether the company carries on a business which is akin to various types of banking activity; and
- c) whether the company concerned is part of a larger group whose parent company is incorporated in or outside Hong Kong and has a well-established brand name which includes a banking name (and the use of that name is not unlawful in the place where the parent company is incorporated).

7.9 According to the Guideline, the MA will regard the first of the above criteria as overriding. That is, regardless of the nature of the business of the company, the MA considers that there are certain names which are clearly misleading in their own right and to which the MA should not give consent. This is because it could blur the distinction between “bank” and “non-bank” in the minds of the public, and create an unfortunate precedent which could be exploited by unscrupulous companies. The question of which names fall into this category is a matter of judgment. For example, the MA considers that the use of names or descriptions such as “ebank”, “ibank” or “cyberbank” is clearly misleading. This is because these are generic terms for companies which engage in internet or electronic banking. Specified terms under section 97(6) of the Banking Ordinance (i.e. merchant bank, investment bank etc.) are also considered to be clearly misleading. The MA will not therefore give consent to the use of these or similar names or descriptions by a non-bank company.

7.10 Where a name or description is not clearly misleading, but could be depending on the context, the MA will have regard to criterion (b) in Paragraph 7.7. That is, if the company engages in a business which is akin to banking activity (even if it does not involve the taking of deposits), the MA will not normally give consent to the use of a banking name or description even if its use is not clearly misleading.

7.11 Criterion (c) in Paragraph 7.7 above will be regarded as subsidiary to the other two. That is, where the company concerned wishes to use a banking name which is not clearly misleading and the company does not engage in business which is akin to banking activity, the use of a name which is the existing well-established brand name of its parent company may be an additional factor which would influence the MA to grant consent to the use of the name in question.

#### Conditions for specific consent

7.12 The MA may attach conditions to consent for the use of a banking name or description. Such conditions may include, but are not limited to, the following:

- a) the company should not engage, now or in the future, in business activities which are akin to banking;
- b) the company should provide the MA with a copy of its audited accounts and annual report each year; and

- c) the company should agree to provide the MA with whatever additional information that may be required from time to time for the purpose of ascertaining whether the conditions attached to a specific consent are being fulfilled.

#### Procedure for applications

- 7.13 Persons wishing to use banking names or descriptions need to apply for the MA's consent. Applications should be made to the MA in advance of using that name or description to carry on business in Hong Kong. Each application will be considered on its own merits. The applicant should provide the following information to the MA where applicable:
- a) the proposed name or description;
  - b) reasons for using the name or description;
  - c) a detailed description of the nature of its actual or proposed business activities;
  - d) when and where the business will be or has been carried on;
  - e) the date and place of incorporation;
  - f) a certified true and correct copy of the current memorandum and articles of association;
  - g) a certified true and correct copy of the most recent audited accounts and annual report;
  - h) names and addresses of principal shareholder(s), directors and chief executive officer;
  - i) address and telephone/fax numbers; and
  - j) any other information required.
- 7.14 An application to use a banking name or description should be sent to the Banking Development Department of the HKMA.
- 7.15 After receiving the application, the MA will, as soon as practicable, issue either a consent with appropriate conditions (if any) attached or a refusal of consent to the applicant.
- 7.16 The conditions for consent should be observed at all times by the company concerned. Non-compliance with the conditions may result in withdrawal of the consent by the MA.