

## 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. The MA cannot consider applications from partnerships or unincorporated entities.

#### **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 LRO or is an existing authorized institution should find it helpful to discuss its plans for authorization or upgrading of existing authorization with the Division Head of the HKMA's Banking Supervision Department 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 Division Head of the Banking Development Department 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, chief executive (including alternates) and the 5 most senior managers of an institution which is incorporated or to be incorporated in Hong Kong, and the chief executive (including alternates) and the 5 most senior managers of the Hong Kong operations of an institution which is incorporated outside Hong Kong, are required to complete questionnaires regarding their background. These questionnaires are available from the Public Registry of the HKMA.

- 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, organizational 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 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.
- 8.8 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.
- 8.9 An institution which wishes to clarify the information which should be provided to the MA may consult the Division Head of the HKMA's Banking Development Department responsible for authorization matters.

### **Consultation with home supervisor**

- 8.10 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.
- 8.11 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**

- 8.12 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.
- 8.13 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 as soon as reasonably practicable thereafter.
- 8.14 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**

- 8.15 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 MA's enquiries will also affect the processing time.