

BANKING ORDINANCE

Specific consents under section 97(1) of the Banking Ordinance for non-bank persons to use banking names or descriptions

A guideline issued by the Monetary Authority in relation to section 97(1) of the Banking Ordinance

Introduction

1. Under section 97(1) of the Banking Ordinance (“the Ordinance”), it is an offence for any person, other than a bank (i.e. a company which holds a valid banking licence) or a central bank (recognized as such in the place in which it is incorporated), without the written consent of the Monetary Authority (“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.
2. Section 97 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. Details of the exemptions and the criteria for granting general or specific consent are set out in Chapter 7 of the Guide to Authorization (“the Guide”) issued by the Hong Kong Monetary Authority (“HKMA”).
3. The purpose of this guideline is to give further guidance on the MA’s policy on the granting of specific consents for the use of banking names or descriptions by companies (or other persons) who are not banks. For the purposes of this guideline a “banking name or description” is one which falls within the scope of section 97(1)(a) of the Ordinance and includes a company’s internet domain name and logo.

Criteria for granting consent

4. The MA’s general policy, as set out in paragraph 7.7 of the Guide, is that the MA will not give consent to the use of a banking name or description where its use could mislead the public into believing that the company in question is, or may be, a bank or that it is under the direct supervision of a banking supervisor.
5. The MA would obviously not give consent where the use of a banking name or description was part of an apparent deliberate attempt to mislead or defraud members of the public. Otherwise, in exercising discretion whether to grant consent, the MA 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).
6. The MA will regard the first of the above criteria as over-riding. 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. 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 5. 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.

Criterion (c) in paragraph 5 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 consent

8. 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 refrain from engaging, now or in the future, in any activity which is akin to banking activity;

- (b) the company should provide the MA with whatever information that may be required from time to time, including certified true copies of its audited accounts and/or annual reports, for the purpose of ascertaining whether the conditions attached to this specific consent are being fulfilled; and
- (c) the company should give the MA not less than 7 working days' advance written notice of any intended change in its name and/or description (such as brand name, trademark, logo, etc.).

Procedure for applications

9. 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.
10. An application to use a banking name or description should be sent to the Licensing Team of the HKMA.
11. 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.

12. 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.

Hong Kong Monetary Authority
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