

**BANKING (AMENDMENT) ORDINANCE 2005****CONTENTS**

| Section | Page |
|---------|------|
|---------|------|

**PART 1****PRELIMINARY**

- |    |                                    |      |
|----|------------------------------------|------|
| 1. | Short title and commencement ..... | A571 |
|----|------------------------------------|------|

**PART 2****AMENDMENTS RELATING TO PUBLIC DISCLOSURE OF  
INFORMATION AND TO CAPITAL ADEQUACY RATIO**

- |    |                                                                                                        |      |
|----|--------------------------------------------------------------------------------------------------------|------|
| 2. | Section substituted                                                                                    |      |
|    | 60A. Disclosure to the general public of information<br>relating to financial affairs .....            | A573 |
| 3. | Capital adequacy ratio .....                                                                           | A573 |
| 4. | Section added                                                                                          |      |
|    | 98A. Calculation of capital adequacy ratio.....                                                        | A575 |
| 5. | Monetary Authority may increase capital adequacy ratio for<br>particular authorized institutions ..... | A575 |
| 6. | Part XVIIIA added                                                                                      |      |

**PART XVIIIA****CAPITAL ADEQUACY REVIEW TRIBUNAL**

- |       |                                                                |      |
|-------|----------------------------------------------------------------|------|
| 101A. | Establishment of Capital Adequacy Review Tribunal              | A577 |
| 101B. | Application to Review Tribunal .....                           | A579 |
| 101C. | Determination of review by Review Tribunal .....               | A579 |
| 101D. | Registration of determination made by Review<br>Tribunal ..... | A581 |
| 101E. | Powers of Review Tribunal .....                                | A581 |

| Section                                                       | Page |
|---------------------------------------------------------------|------|
| 101F. Sittings of Review Tribunal to be held in private ..... | A585 |
| 101G. Use of incriminating evidence given under compulsion    | A587 |
| 101H. Appeal to Court of Appeal .....                         | A587 |
| 101I. Power of Chief Justice to make rules .....              | A589 |
| 7. Amendments consequential to sections 2 to 6 .....          | A589 |

### PART 3

#### OTHER AMENDMENTS

|                                                                                                 |      |
|-------------------------------------------------------------------------------------------------|------|
| 8. Interpretation .....                                                                         | A591 |
| 9. Revocation of authorization .....                                                            | A591 |
| 10. Disciplinary action in respect of relevant individuals .....                                | A591 |
| 11. Audit .....                                                                                 | A591 |
| 12. Returns and information to be submitted to the Monetary<br>Authority .....                  | A593 |
| 13. Punishment for attempted evasion of restrictions .....                                      | A593 |
| 14. Executive officers of registered institutions require Monetary<br>Authority's consent ..... | A593 |
| 15. Revocation of approval .....                                                                | A593 |
| Schedule Amendments consequential to sections 2 to 6 of this<br>Ordinance .....                 | A595 |

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

ORDINANCE No. 19 OF 2005

L.S.Donald TSANG  
Chief Executive  
14 July 2005

An Ordinance to amend the Banking Ordinance.

[ ]

Enacted by the Legislative Council.

**PART 1****PRELIMINARY****1. Short title and commencement**

(1) This Ordinance may be cited as the Banking (Amendment) Ordinance 2005.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

**PART 2****AMENDMENTS RELATING TO PUBLIC DISCLOSURE OF INFORMATION  
AND TO CAPITAL ADEQUACY RATIO****2. Section substituted**

Section 60A of the Banking Ordinance (Cap. 155) (as inserted by section 6 of the Banking (Amendment) Ordinance 1999 (42 of 1999) and further amended by section 24(4) of the Banking (Amendment) Ordinance 2001 (32 of 2001)) is repealed and the following substituted—

**“60A. Disclosure to the general public of information relating to financial affairs**

(1) The Monetary Authority may, after consultation with the Financial Secretary and the persons specified in subsection (2), make rules prescribing the information to be disclosed to the general public by authorized institutions relating to their state of affairs, profit and loss or capital adequacy ratio and prescribing the manner in which, times at which and periods during which such information shall be so disclosed.

(2) The persons specified for the purposes of subsection (1) are—

- (a) the Banking Advisory Committee;
- (b) the Deposit-taking Companies Advisory Committee;
- (c) The Hong Kong Association of Banks; and
- (d) The DTC Association.

(3) Rules made under subsection (1) may make different provision for authorized institutions belonging to different classes of authorized institution.

(4) Where an authorized institution fails to comply with any requirement applicable to it contained in rules made under subsection (1), every director, every chief executive and every manager of the authorized institution commits an offence and is liable—

- (a) on conviction upon indictment to a fine at tier 7; or
- (b) on summary conviction to a fine at tier 5,

and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues.

(5) For the avoidance of doubt, it is hereby declared that any requirement under subsection (1) for the Monetary Authority to consult with any person shall not operate to prevent the Monetary Authority from consulting with such other person as the Monetary Authority thinks fit.”.

**3. Capital adequacy ratio**

Section 98(1) is amended by repealing everything after “with” and substituting “subsection (2) and rules made under section 98A(1).”.

**4. Section added**

The following is added—

**“98A. Calculation of capital adequacy ratio**

(1) The Monetary Authority may, after consultation with the Financial Secretary and the persons specified in subsection (2), make rules prescribing the manner in which the capital adequacy ratio of authorized institutions shall be calculated.

- (2) The persons specified for the purposes of subsection (1) are—
- (a) the Banking Advisory Committee;
  - (b) the Deposit-taking Companies Advisory Committee;
  - (c) The Hong Kong Association of Banks; and
  - (d) The DTC Association.

(3) Rules made under subsection (1) may provide for the Monetary Authority, on application made to him by an authorized institution aggrieved by a decision of the Monetary Authority made in relation to it under those rules, to review his decision.

(4) Rules made under subsection (1) may provide that a decision made by the Monetary Authority under those rules is a decision to which section 101B(1) applies.

(5) For the avoidance of doubt, it is hereby declared that any requirement under subsection (1) for the Monetary Authority to consult with any person shall not operate to prevent the Monetary Authority from consulting with such other person as the Monetary Authority thinks fit.”.

**5. Monetary Authority may increase capital adequacy ratio for particular authorized institutions**

Section 101(1) is repealed and the following substituted—

“(1) The Monetary Authority may, after consultation with an authorized institution, by notice in writing served on it vary the capital adequacy ratio specified in section 98(1) in relation to that institution by increasing the ratio to not more than 16 per cent and, where the ratio is so varied, the other provisions of this Part shall, in relation to that institution, apply as if the ratio specified in section 98(1) were the ratio as so varied.”.

**6. Part XVIIA added**

The following is added immediately after section 101—

**“PART XVIII****CAPITAL ADEQUACY REVIEW TRIBUNAL****101A. Establishment of Capital Adequacy Review Tribunal**

(1) There is established a tribunal to be known as the “Capital Adequacy Review Tribunal” in English and “資本充足事宜覆核審裁處” in Chinese, comprising a chairman and such number of members as may be appointed under subsection (3).

(2) The Chief Executive shall, by notice published in the Gazette, appoint to be the Chairman of the Review Tribunal a person who—

- (a) is qualified for appointment as a judge of the High Court under section 9 of the High Court Ordinance (Cap. 4); and
- (b) is not a public officer or, if he is, is a public officer by virtue only of being the chairman of a board or tribunal established under an Ordinance.

(3) The Chief Executive shall, by notice published in the Gazette, appoint as members of the Review Tribunal persons, not being public officers, whom he considers suitable for that appointment, and the number of persons so appointed shall at any one time be not less than 2.

(4) The Chairman and members of the Review Tribunal shall be paid, as a fee for their services, such amounts as the Chief Executive considers appropriate; and of those amounts the amounts payable to the Chairman shall be a charge on the general revenue, and the amounts payable to members shall be a charge on the Exchange Fund established under section 3 of the Exchange Fund Ordinance (Cap. 66).

(5) The Fifteenth Schedule has effect with respect to the Review Tribunal.

(6) Subject to this Part and the Fifteenth Schedule and to rules made under section 101I, the Chairman of the Review Tribunal may determine the procedures and practice of the Review Tribunal.

(7) In this section, “public officer” (公職人員) does not include a person who is a judicial officer for the purpose of section 2 of the Judicial Officers Recommendation Commission Ordinance (Cap. 92) or a judicial officer appointed by the Chief Justice.

**101B. Application to Review Tribunal**

(1) An authorized institution that is aggrieved by a decision of the Monetary Authority made in relation to it, being a decision to which this section applies by virtue of section 98A(4), may, at any time within the period specified in subsection (3), apply to the Review Tribunal for a review of the decision.

(2) An application for review shall be in writing and shall state the grounds for the application for a review.

(3) The period specified for the purposes of subsection (1) is the period ending 30 days after the receipt by the authorized institution of notice in writing given by the Monetary Authority informing it of the decision, or such later date as the Review Tribunal may, in the circumstances of the particular case, allow.

(4) The making of an application to the Review Tribunal for a review of a decision does not operate to suspend the decision.

**101C. Determination of review by Review Tribunal**

(1) The Review Tribunal shall deliver to the Monetary Authority a copy of any application for a review of a decision under section 101B(1) that it has received.

(2) As soon as practicable after receipt of that copy, the Monetary Authority shall forward to the Review Tribunal a copy of the decision together with all other relevant papers in his possession.

(3) In reviewing a decision of the Monetary Authority, the Review Tribunal shall afford both the applicant and the Monetary Authority a reasonable opportunity of being heard.

(4) For the purpose of proceedings before the Review Tribunal, matters of fact are established if they are established on the balance of probabilities.

(5) In determining a review of a decision, the Review Tribunal may—

- (a) affirm, vary or set aside the decision; or
- (b) remit the matter to the Monetary Authority with any direction that it considers appropriate.

(6) As soon as practicable after completing the review, the Review Tribunal shall deliver its determination and the reasons for that determination.

**101D. Registration of determination  
made by Review Tribunal**

(1) A determination made by the Review Tribunal shall be recorded in writing and signed by the Chairman of the Tribunal.

(2) The Court of First Instance may, on notice in writing given by the Review Tribunal in the manner prescribed by rules made by the Chief Justice under section 101I, register a determination of the Review Tribunal in the Court of First Instance; and a determination so registered shall for all purposes be regarded as an order of the Court of First Instance made within the jurisdiction of the Court of First Instance.

(3) The determination of the Review Tribunal is final and, except as provided in section 101H, is not subject to appeal.

(4) For the purposes of any proceedings in a court of law, a document purporting to be a record of a determination of the Review Tribunal signed by the Chairman of the Review Tribunal shall, in the absence of evidence to the contrary, be regarded as a determination of the Review Tribunal duly made and signed, without proof of its making, or proof of signature, or proof that the person signing the determination was in fact the Chairman of the Review Tribunal.

**101E. Powers of Review Tribunal**

- (1) For the purposes of any review, the Review Tribunal may—
- (a) receive and consider any material by way of oral evidence, written statements or documents, whether or not the material would be admissible in a court of law;
  - (b) determine the manner in which any such material is received;
  - (c) by notice in writing signed by the Chairman of the Tribunal, require a person to attend before it and, subject to subsection (2), to give evidence and produce any article, record or document in his possession or control relating to the subject matter of the review;
  - (d) administer oaths;
  - (e) examine or cause to be examined on oath or otherwise a person attending before it and require the person to answer truthfully any question which the Tribunal considers appropriate for the purpose of the review;
  - (f) order a witness to provide evidence for the purpose of the review by affidavit;

- (g) stay any of the proceedings in the review on such grounds and on such terms and conditions as it considers appropriate having regard to the interests of justice;
- (h) order that costs be paid to any party to the review or any person who is required to attend before it for the purpose of the review;
- (i) hear an application for stay of proceedings for a review at any time before its determination is made; and
- (j) exercise such other powers or make such other orders as may be necessary for or ancillary to the conduct of the review or the performance of its functions.

(2) Nothing in subsection (1) empowers the Review Tribunal to require—

- (a) the technical consultant or adviser of an applicant to disclose any information relating to the affairs of any person other than the applicant; or
- (b) a solicitor or counsel to disclose any privileged communication, whether oral or written, made to or by him in that capacity.

(3) For the avoidance of doubt, the rules of law under which evidence or documents are permitted or required to be withheld on grounds of public interest immunity apply in relation to proceedings of the Review Tribunal as they apply in relation to civil proceedings in a court and, accordingly, a person may not under subsection (1) be required to give, produce or provide any evidence or document if he could not be required to do so if the proceedings of the Review Tribunal were civil proceedings in a court.

(4) No person shall—

- (a) fail to comply with an order, notice, prohibition or requirement of the Review Tribunal made or given under or pursuant to subsection (1) or the Fifteenth Schedule;
- (b) disrupt any sitting of the Review Tribunal or otherwise misbehave during any such sitting;
- (c) having been required by the Review Tribunal under subsection (1) to attend before the Tribunal, leave the place where his attendance is so required without the permission of the Tribunal;
- (d) hinder or deter any person from attending before the Review Tribunal, giving evidence or producing any article, record or document, for the purpose of a review;
- (e) threaten, insult or cause any loss to be suffered by any person who has attended before the Review Tribunal, on account of such attendance; or

- (f) threaten, insult or cause any loss to be suffered by the Chairman, or any member, of the Review Tribunal at any time on account of the performance of his functions in that capacity.
- (5) A person who, without reasonable excuse, contravenes subsection (4) commits an offence and is liable—
- (a) on conviction upon indictment to a fine at tier 8 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months.
- (6) A person is not excused from complying with an order, notice, prohibition or requirement of the Review Tribunal made or given under or pursuant to subsection (1) only on the ground that to do so might tend to incriminate the person.

#### **101F. Sittings of Review Tribunal to be held in private**

- (1) The sittings of the Review Tribunal shall be held in private.
- (2) A participant in proceedings for a review shall not, at the time of the proceedings or at any other time, publish or otherwise disclose to any person any information about the review or any information that comes to his knowledge in the course of the review.
- (3) Subsection (2) does not apply to a disclosure, by a participant in proceedings for a review—
- (a) made to another participant in the same proceedings, where the disclosure is necessary for the proper carrying out of the first-mentioned participant's functions in relation to the review; or
- (b) necessarily made for the purpose of an appeal to the Court of Appeal under section 101H in relation to the review.
- (4) Subsection (2) does not apply to publication by the Review Tribunal under subsection (6) of the reasons for its determination in any proceedings.
- (5) A person who contravenes subsection (2) commits an offence and is liable—
- (a) on conviction upon indictment to a fine at tier 8 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months.

(6) The Review Tribunal may, with the consent of the applicant and the Monetary Authority, for the information of authorized institutions generally, publish the reasons for its determination in any proceedings, or a summary of any part of those reasons, but without disclosing or containing information leading to the disclosure of—

- (a) the identity of the applicant or any witness in the proceedings;
- (b) any commercially sensitive information relating to the applicant; or
- (c) any confidential information obtained from the Monetary Authority.

(7) In this section, “participant” (參與者), in relation to any proceedings for a review, means the Chairman and members of the Review Tribunal, the applicant in the proceedings, and any witness, solicitor, counsel or other person involved in the review but, without prejudice to section 120(1), does not include the Monetary Authority.

#### **101G. Use of incriminating evidence given under compulsion**

(1) This section applies to any evidence, answer or information given or provided by a person pursuant to a requirement or order of the Review Tribunal made under section 101E(1)(c), (e), (f) or (j).

(2) Notwithstanding any other provision of this Ordinance, neither the evidence, answer or information given or provided by the person nor the requirement or order made by the Review Tribunal shall be admissible in evidence against the person in criminal proceedings in a court of law, other than proceedings in which the person is charged with an offence under section 101E(4)(a), or with an offence under Part V of the Crimes Ordinance (Cap. 200), or with perjury, in respect of the evidence, answer or information.

#### **101H. Appeal to Court of Appeal**

(1) A party to proceedings for a review before the Review Tribunal may, if dissatisfied with a decision of the Review Tribunal in the proceedings or with the determination of the review, appeal to the Court of Appeal against the decision or determination on a point of law.

(2) Where an appeal has been lodged under subsection (1) the Court of Appeal may, on application made to it by any party to the review proceedings, order a stay of the proceedings, or of execution of the determination, of the Review Tribunal, subject to such conditions as to costs, payment of money into the Tribunal or otherwise as the Court of Appeal considers appropriate; but the lodging of an appeal under subsection (1) does not of itself operate as a stay of the proceedings, or of execution of the determination, of the Tribunal.

(3) The Court of Appeal may affirm, vary or set aside the decision or determination appealed against, or may remit the matter in question to the Review Tribunal, or to the Monetary Authority, with such directions as it considers appropriate.

(4) The Rules of the High Court (Cap. 4 sub. leg. A) apply in relation to such an appeal to the extent that those Rules are not inconsistent with this Ordinance.

(5) In an appeal under this section, the Court of Appeal may make such order for payment of costs as it considers appropriate.

#### **101I. Power of Chief Justice to make rules**

The Chief Justice may make rules—

- (a) providing for matters of procedure, or other matters, relating to applications for a review, or reviews, under this Part, which are not provided for in this Part or section 5 of the Fifteenth Schedule;
- (b) providing for the issue or service of any document (however described) for the purposes of this Part or section 5 of the Fifteenth Schedule;
- (c) providing for matters relating to the registration in the Court of First Instance pursuant to section 101D(2) of a determination of the Review Tribunal;
- (d) regulating the procedure for the hearing of appeals under section 101H; or
- (e) prescribing anything required to be prescribed under this Part or section 5 of the Fifteenth Schedule.”.

#### **7. Amendments consequential to sections 2 to 6**

The amendments set out in the Schedule shall have effect.

**PART 3****OTHER AMENDMENTS****8. Interpretation**

(1) Section 2(8) is amended by adding “, other than section 14,” after “Ordinance”.

(2) Section 2 is amended by adding—

“(18) Any provision of this Ordinance that purports to impose criminal liability on every manager of an authorized institution or other company in the event of a contravention of this Ordinance shall be construed as imposing criminal liability on a manager of an authorized institution or other company only to the extent that the contravention was caused or contributed to by an act or omission on the part of the manager himself or a person under his control.”.

**9. Revocation of authorization**

(1) Section 22(1) is amended by repealing “subsection (3)” and substituting “subsections (1A) and (3)”.

(2) Section 22 is amended by adding—

“(1A) The requirement in subsection (1) to consult the Financial Secretary before proposing to revoke the authorization of an authorized institution shall not apply where the ground for the revocation of the authorization of the authorized institution is a request in writing by the institution to the Monetary Authority to revoke its authorization.”.

**10. Disciplinary action in respect of relevant individuals**

Section 58A is amended by adding—

“(4A) Where the Monetary Authority has exercised his power under subsection (1) against a relevant individual, the Monetary Authority may disclose to the public details of the decision he has made under that subsection, the reasons for which the decision was made, and any material facts relating to the case.”.

**11. Audit**

Section 59(5) is amended by repealing “or (2)” and substituting “, and every director, every chief executive and every manager of an authorized institution which, without reasonable excuse, contravenes subsection (2)”.

**12. Returns and information to be submitted to the Monetary Authority**

Section 63(5) is amended by repealing “contravenes subsection (1), or fails to comply with any requirement under subsection (3) or (3A),” and substituting “, without reasonable excuse, contravenes subsection (1) or fails to comply with any requirement under subsection (3) or (3A)”.

**13. Punishment for attempted evasion of restrictions**

Section 70D(2) is amended by repealing “every director, every chief executive and every manager” and substituting “any director, chief executive or manager”.

**14. Executive officers of registered institutions require Monetary Authority’s consent**

Section 71C is amended by adding—

“(7A) Where the Monetary Authority has exercised his power under subsection (4) against an executive officer, the Monetary Authority may disclose to the public details of the decision he has made under that subsection, the reasons for which the decision was made, and any material facts relating to the case.”.

**15. Revocation of approval**

(1) Section 118D(1) is amended by repealing “subsection (2)” and substituting “subsections (1A) and (2)”.

(2) Section 118D is amended by adding—

“(1A) The requirement in subsection (1) to consult the Financial Secretary before proposing to revoke the approval of an approved money broker shall not apply where the ground for the revocation of the approval of an approved money broker is a request in writing by the money broker to the Monetary Authority to revoke its approval.”.

SCHEDULE

[s. 7]

AMENDMENTS CONSEQUENTIAL TO SECTIONS 2 TO 6  
OF THIS ORDINANCE

PART 1

AMENDMENTS TO THE BANKING ORDINANCE AND  
ITS SUBSIDIARY LEGISLATION

**Banking Ordinance**

**1. Interpretation**

(1) The Banking Ordinance (Cap. 155) is amended, in section 2(1), by repealing the definition of “capital adequacy ratio” and substituting—

““capital adequacy ratio” (資本充足比率), in relation to an authorized institution, means the ratio of the institution’s capital base to a value representing the degree of risk of the following kinds to which the institution is exposed—

- (a) credit risk, that is to say, the risk of loss from—
  - (i) default by counterparties in on-balance sheet and off-balance sheet items of the institution; or
  - (ii) diminution in the value of such on-balance sheet items of the institution as may for the purposes of this paragraph be prescribed by the Monetary Authority in rules made under section 98A(1);
- (b) market risk, that is to say, the potential losses arising from fluctuations in the value of positions held by the institution—
  - (i) for trading purposes in debt securities, interest rate-related contracts, equities and equity-related contracts; and
  - (ii) in foreign exchange, exchange rate-related contracts, commodities and commodity-related contracts; and
- (c) operational risk, that is to say, the risk of direct or indirect losses resulting from—
  - (i) inadequacies or failings in the processes or systems, or of personnel, of the institution; or
  - (ii) external events;”.

(2) Section 2(1) is amended by adding—

“capital base” (資本基礎), in relation to an institution, means the sum of—

- (a) the following amounts, but in each case only to the extent prescribed by the Monetary Authority in rules made under section 98A(1), namely—
  - (i) the paid-up capital of the institution;
  - (ii) the amount standing to the credit of the share premium account of the institution;
  - (iii) the audited retained earnings of the institution; and
  - (iv) the published reserves of the institution; and
- (b) the amounts of such other resources of the institution as may for the purposes of this paragraph be prescribed by the Monetary Authority in rules made under section 98A(1);

“multilateral development bank” (多邊發展銀行) means any bank or lending or development body specified by the Monetary Authority under subsection (19);

“Review Tribunal” (覆核審裁處) means the Capital Adequacy Review Tribunal established under section 101A;

“share premium account” (股份溢價帳)—

- (a) in relation to a company incorporated in Hong Kong, means a share premium account referred to in section 48B(1) of the Companies Ordinance (Cap. 32) maintained in respect of the company;
- (b) in relation to a company incorporated outside Hong Kong, means an account having the same characteristics as a share premium account referred to in section 48B(1) of the Companies Ordinance (Cap. 32) irrespective of its name;

“The DTC Association” (DTC 公會) means The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies incorporated under the Companies Ordinance (Cap. 32);

“The Hong Kong Association of Banks” (香港銀行公會) means the body corporate of that name incorporated by section 3 of The Hong Kong Association of Banks Ordinance (Cap. 364);

“Tier 1 country” (第1級國家) means Hong Kong and any country or place other than Hong Kong which—

- (a) is a member of the Organization for Economic Co-operation and Development; or
- (b) has concluded a special lending arrangement with the International Monetary Fund associated with the International Monetary Fund’s General Arrangements to Borrow,

but excludes any such country or place which—

- (c) has rescheduled its external sovereign debt, whether to central government or non-central government creditors, within the previous 5 years; or
  - (d) is specified by the Monetary Authority by notice published in the Gazette as being a country or place that is not to be regarded as a Tier 1 country for the purposes of this definition;”.
- (3) Section 2 is amended by adding—

“(19) The Monetary Authority may by notice published in the Gazette specify to be a multilateral development bank for the purposes of this Ordinance any bank or lending or development body established by agreement between, or guaranteed by, 2 or more countries, territories or international organizations other than for purely commercial purposes.”.

## 2. **Functions of the Monetary Authority**

Section 7(3) is amended by repealing everything after “Gazette” and substituting “guidelines indicating the manner in which he proposes to exercise functions conferred or imposed by or under this Ordinance upon him.”.

## 3. **Interpretation and application**

Section 79(2) is amended by repealing everything after “with” and substituting “rules made under section 98A(1).”.

## 4. **Limitations on advances by authorized institutions**

- (1) Section 81(2)(c) is repealed and the following substituted—
- “(c) the product of—
- (i) the principal amount of any item that, in relation to the institution, is an off-balance sheet item for the purpose of rules made under section 98A(1); and
  - (ii) the factor specified by the Monetary Authority pursuant to subsection (3) for that item,
- where, in respect of that institution, the other party is,”.
- (2) Section 81(6)(b)(i)(D) is amended by repealing “within the meaning of the Third Schedule”.
- (3) Section 81(8)(b) is repealed and the following substituted—
- “(b) the expression “debt securities” (債務證券) shall mean any securities other than shares, stocks or import or export trade bills;”.

**5. Official secrecy**

Section 120(5) is amended by adding—  
“(da) to the disclosure of information to the Review Tribunal;”.

**6. Power to amend Schedules**

(1) Section 135(1) is amended by repealing “Seventh or Eighth” and substituting “Seventh, Eighth or Fifteenth”.

(2) Section 135(3) is amended by repealing “Third,”.

**7. Capital adequacy ratio**

The Third Schedule is repealed.

**8. Liquidity ratio**

(1) The Fourth Schedule is amended, in paragraph 1, by repealing the definition of “multilateral development bank”.

(2) The Fourth Schedule is amended, in paragraph 1, by repealing the definition of “public sector entity in Hong Kong” and substituting—

“ “public sector entity in Hong Kong” (香港公營單位) means any entity specified by the Monetary Authority under paragraph 1A;”.

(3) The Fourth Schedule is amended by adding—

“1A. The Monetary Authority may by notice published in the Gazette specify to be a public sector entity in Hong Kong for the purposes of this Schedule any entity established by or on behalf of the Government.”.

**9. Minimum criteria for authorization**

(1) The Seventh Schedule is amended, in paragraph 1(1), by repealing the definition of “share premium account”.

(2) The Seventh Schedule is amended, in paragraph 6(d), by repealing the semicolon and substituting a full stop.

(3) The Seventh Schedule is amended by repealing paragraph 6(e).

(4) The Seventh Schedule is amended, in paragraph 11(a), by repealing “and its profit and loss” and substituting “, its profit and loss and its capital adequacy ratio”.

**10. Minimum criteria for approval as money broker**

The Eleventh Schedule is amended, in paragraph 1(1), by repealing the definition of “share premium account”.

**11. Fifteenth Schedule added**

The following is added—

“FIFTEENTH SCHEDULE [ss. 101A, 101E,  
101I & 135]

PROVISIONS RELATING TO  
CAPITAL ADEQUACY  
REVIEW TRIBUNAL

**1. Interpretation**

In this Schedule—

“Chairman” (主席) means Chairman of the Review Tribunal;

“member” (成員) means a member of the Review Tribunal;

“parties” (雙方), in relation to an application to the Review Tribunal for a review of a decision of the Monetary Authority, means the person making the application and the Monetary Authority.

**2. Tenure of Chairman**

(1) The term of appointment of a person as Chairman shall not exceed 3 years.

(2) A person whose term of appointment or reappointment as Chairman has expired may be reappointed.

(3) A person appointed as Chairman may resign his office by giving notice in writing to the Chief Executive, and the notice shall take effect on the date specified in the notice or, if no such date is specified, on the date of receipt of the notice by the Chief Executive.

(4) If the Chief Executive is satisfied that the person appointed as Chairman—

(a) has become bankrupt;

(b) is incapacitated by physical or mental illness;

(c) is otherwise unable or unfit to perform the functions of Chairman; or

(d) is no longer qualified for appointment as Chairman under section 101A(2) of this Ordinance,

the Chief Executive may, by notice published in the Gazette, revoke the person’s appointment as Chairman; and upon such revocation the office becomes vacant.

**3. Tenure of members**

(1) The term of appointment of a member shall not exceed 3 years.

(2) A member whose term of appointment or reappointment has expired may be reappointed.

(3) A member may resign by giving notice in writing to the Chief Executive, and the notice shall take effect on the date specified in the notice or, if no such date is specified, on the date of receipt of the notice by the Chief Executive.

(4) If the Chief Executive is satisfied that a member—

(a) has become bankrupt;

(b) is incapacitated by physical or mental illness;

(c) is otherwise unable or unfit to perform the functions of a member; or

(d) is no longer qualified for appointment as a member under section 101A(3) of this Ordinance,

the Chief Executive may, by notice published in the Gazette, revoke the member's appointment.

**4. Further provisions relating to  
Chairman and members**

(1) If the person appointed as Chairman under section 101A of this Ordinance is precluded by illness, absence from Hong Kong or any other cause from exercising his functions, the Chief Executive may appoint a person who is qualified for appointment as Chairman under that section to act as Chairman, and as such to exercise all the functions of Chairman, for the period during which the first-mentioned person is so precluded.

(2) If a person appointed as a member under section 101A of this Ordinance is precluded by illness, absence from Hong Kong or any other cause from taking part in proceedings of the Review Tribunal, the Chief Executive may appoint a person who is qualified for appointment as a member under that section to act as a member, and as such to take part in proceedings of the Review Tribunal, for the period during which the first-mentioned person is so precluded.

(3) If at the expiry of the term of appointment of the person who is or is acting as Chairman, or of a person who is or is acting as a member, the hearing of a review has begun but the review has not been determined, that person may continue to act as Chairman or as a member (as the case may be) for the purposes of that review until the review has been determined.

(4) If during the hearing of a review there is any change in the person who is or is acting as Chairman or in the persons who are or are acting as members, then—

- (a) if the parties to the review so consent, the hearing may continue notwithstanding that change; or
- (b) in the absence of such consent, the hearing shall not continue but may begin anew.

## 5. Procedure

(1) The Review Tribunal shall convene on such occasions as the Chairman considers necessary to determine a review.

(2) The Chairman may, at any time after an application for a review of a decision has been made, give directions to the parties to the review concerning—

- (a) procedural matters to be complied with by any of the parties; and
- (b) the time within which such procedural matters are to be complied with.

(3) The quorum for any sitting of the Review Tribunal shall be the Chairman and 2 members.

(4) At a sitting of the Review Tribunal—

- (a) the Chairman shall preside; and
- (b) every question before the Review Tribunal shall be determined by the majority of the votes cast by the Chairman and members present, except that a question of law shall be determined by the Chairman alone.

(5) The right to be heard conferred by section 101C(3) of this Ordinance may be exercised in person or—

- (a) in the case of a corporation, through its officer or employee;
- (b) in the case of the Monetary Authority, through a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66) to assist the Monetary Authority,

or may be exercised through a solicitor or counsel or, with the leave of the Review Tribunal, through any other person.

(6) The Chairman shall prepare or cause to be prepared a record of the proceedings at any sitting of the Review Tribunal, which shall contain such particulars relating to the proceedings as he considers appropriate.

## 6. Privileges and immunities

Except as otherwise provided in this Ordinance—

(a) the Review Tribunal, its Chairman and its members; and  
(b) the parties to, and any witness, solicitor, counsel or other person involved in, a review,  
shall have the same privileges and immunities in respect of the review as they would have if the review were civil proceedings before the Court of First Instance.”.

### **Specification of Factors (Financial Exposure of Authorized Institution) Notice**

#### **12. Repeal**

The Specification of Factors (Financial Exposure of Authorized Institution) Notice (Cap. 155 sub. leg. C) is repealed.

### **Banking (Specification of Public Sector Entities in Hong Kong) Notice**

#### **13. Repeal**

The Banking (Specification of Public Sector Entities in Hong Kong) Notice (Cap. 155 sub. leg. E) is repealed.

## **PART 2**

### **AMENDMENTS TO OTHER ORDINANCES**

#### **Companies Ordinance**

##### **1. Preferential payments**

Section 265(6) of the Companies Ordinance (Cap. 32) (as amended by the Deposit Protection Scheme Ordinance (Cap. 581)) is amended, in the definition of “excluded person”, in paragraph (c), by repealing “paragraph 1 of the Third Schedule to” and substituting “section 2(1) of”.

### **Electronic Transactions Ordinance**

**2. Proceedings in relation to which sections 5, 5A, 6, 7 and 8 of this Ordinance do not apply under section 13(1) of this Ordinance**

Schedule 2 to the Electronic Transactions Ordinance (Cap. 553) (as amended by section 69 of the Construction Workers Registration Ordinance (Cap. 583) and further amended by section 59 of the Clearing and Settlement Systems Ordinance (Cap. 584)) is amended—

- (a) in paragraph (zo), by repealing “ ; 或 ” and substituting a semicolon;
- (b) in paragraph (zp), by repealing the full stop and substituting a semicolon;
- (c) by adding—  
“(zq) the Capital Adequacy Review Tribunal established under the Banking Ordinance (Cap. 155).”.

### **Deposit Protection Scheme Ordinance**

**3. Deposits specified for purposes of definitions of “protected deposit” and “relevant deposit” in section 2(1) of this Ordinance**

Schedule 1 to the Deposit Protection Scheme Ordinance (Cap. 581) is amended, in section 3, in paragraph (b) of the definition of “excluded person”, by repealing “paragraph 1 of the Third Schedule to” and substituting “section 2(1) of”.