

Bills Committee on Financial Institutions (Resolution) Bill

**Clause-by-clause Examination
Draft Committee Stage Amendments – Second Batch**

Following members' deliberation of the Financial Institutions (Resolution) Bill (the Bill) at the Bills Committee meetings, the Government will propose some Committee Stage Amendments (CSAs) to amend the Bill. This paper sets out the second batch of the proposed draft CSAs at **Annex**.

2. Members are invited to examine the Bill with the draft CSAs marked on the relevant clauses in the **Annex**. The rationale behind each of these draft CSAs is provided in the footnotes. These draft CSAs are subject to revisions if necessary.

**Financial Services and the Treasury Bureau (Financial Services
Branch)
Hong Kong Monetary Authority
Securities and Futures Commission
Office of the Commissioner of Insurance
May 2016**

Financial Institutions (Resolution) Bill

Draft Committee Stage Amendments – Second Batch

Amendment Proposed

(1) Clause 2(1)

non-Hong Kong resolution action (非香港處置行動) means an action under the law of a non-Hong Kong jurisdiction to manage the failure or likely failure of a non-Hong Kong financial institution or non-Hong Kong group company—

- (a) the anticipated results of which are, in relation to the non-Hong Kong financial institution or non-Hong Kong group company, broadly comparable to results that could have been anticipated from the ~~application of a stabilization option to exercise of a power conferred by Part 5, or by Schedule 3, 4 or 6, on a resolution authority in respect of~~ an entity in Hong Kong; and
- (b) the objectives of which are, in relation to that jurisdiction, broadly comparable to the resolution objectives as they apply in relation to Hong Kong;¹

(2) Clause 47(1)(a)

(1)如 —

- (a) 某過渡機構全部或大致上接近全部的資產、權利及負債，已轉讓予第三方；或
- (b) 在根據本次分部向該機構作出轉讓後，在適用的後轉讓期內，再沒有根據本次分部，向它作出轉讓，
則處置機制當局須不作延擱地採取一切必要步驟，將該機構清盤。²

¹ This draft CSA seeks to widen the definition of “non- Hong Kong resolution action” in order to make sure that certain powers that could be exercised under a Part 5 instrument but which are not themselves stabilization options (for example, imposing a temporary stay on early termination rights and suspension of obligations, as well as directing an affiliated operational entity (AOE) to continue to provide essential services, etc.) are able to be recognized by a resolution authority in Hong Kong should a non-Hong Kong resolution authority seek recognition of the exercise of such powers.

² This draft CSA seeks to improve the Chinese drafting. The background of this CSA has been explained at paragraphs 35-36 of the Government’s response to issues raised at the meetings on 18 and 19 April 2016 (Paper No. CB(1)/860/15-16(04)).

(3) Clause 75(2)(d)

- (d) 規定凡處置機制當局在訂立導致達成局部財產轉讓的受規管第 5 部文書時，力求確保該文書不具有以下效力：藉著分割受保障安排的組成部分，或藉著以其他方式影響該等組成部分，對該項安排的參與方(出讓人除外)造成不利影響；³

(4) Clause 81(5)

- (5) 凡在緊接有關相聯金融機構的處置啟動前，有關服務是根據某些條款(~~原有條款~~)向該機構提供的，則除第(6)款另有規定外，有關通知所指明的條款，須與原有條款相同，或大致實質上相類。⁴

(5) Clause 88

Qualifying contracts

A contract entered into by a qualifying entity is a qualifying contract if the ~~substantive obligations provided for in it (including payment and delivery obligations and provision of collateral)~~ obligations provided for in it for payment and delivery and for provision of collateral continue to be performed.⁵

(6) Clause 89

Events to be disregarded

A crisis prevention measure taken in relation to a qualifying entity, or the occurrence of an event directly linked to the taking of such a measure, does not of itself trigger a default event provision under a ~~qualifying contract—contract—~~

- (a) that is entered into by the qualifying entity or by an entity that is a member of the same group of companies as the qualifying entity; and
- (b) the substantive obligations provided for in which (including payment and delivery obligations and provision of collateral) continue to be performed.⁶

³ This draft CSA seeks to delete a redundant word in the Chinese text.

⁴ Please refer to footnote 2.

⁵ This draft CSA seeks to better reflect the intention that where a temporary stay is imposed by a resolution authority, as long as the key obligations under a qualifying contract (i.e. payment and delivery obligations and provision of collateral) continue to be performed, then a counterparty does not have the right to trigger a termination right that might otherwise arise because certain other obligations (e.g. triggers relating to the financial condition of the financial institution (FI)) are temporarily not being performed.

⁶ This draft CSA seeks to make clear that although the application of a crisis prevention measure to a qualifying entity does not of itself trigger a default event provision in a contract entered into by that qualifying entity or an entity that is a member of the same group of companies as the qualifying entity, if the other substantive obligations under the contract are not performed then clause 89 no longer applies.

(7) Clause 95

- (1) The appointment of an independent valuer for the purposes of this Part is to be made by a person (*appointing person*) appointed by the Financial Secretary.
- (2) The Financial Secretary may appoint an appointing person on any terms and conditions that the Financial Secretary thinks fit.
- (3) The Financial Secretary must cause notice of the appointment of an appointing person to be published in the Gazette.
- (3A) *The appointment of an appointing person takes effect on the publication of the notice under subsection (3).*
- (4) An appointing person may at any time resign from office by giving written notice of resignation to the Financial Secretary.
- (5) The Financial Secretary must cause notice of the resignation of an appointing person to be published in the Gazette.
- (6) The resignation of an appointing person takes effect on the publication of the notice under subsection (5).
- (7) The acts of a person acting as an appointing person are valid despite the fact that it is afterwards discovered that there was a defect in the appointment of the appointing person.⁷

(8) New clause after Clause 110 – Clause 110A

110A. Establishment of additional tribunals

- (1) *If the Chief Executive considers it appropriate to do so, the Chief Executive may establish additional tribunals for any reviews over which the Tribunal has jurisdiction.*
- (2) *This Ordinance applies, with necessary modifications, to each of the additional tribunals as it applies to the Tribunal.*⁸

⁷ This draft CSA seeks to achieve greater clarity by specifying explicitly that the appointment of an appointing person takes effect upon gazettal of the notice of appointment. The background of this CSA has been explained at paragraphs 32-33 of the Government's response to issues raised at the meetings on 18 and 19 April 2016 (Paper No. CB(1)/860/15-16(04)).

⁸ This draft CSA seeks to explicitly specify that the Chief Executive may establish additional Resolvability Review Tribunals (RRT) should he consider appropriate to do so. A similar clause is proposed to be added after clause 126, new clause 126A, as well to achieve the same effect for the Resolution Compensation Tribunal (RCT). The background of this CSA has been explained at paragraph 39 of the Government's response to issues raised at the meetings on 18 and 19 April 2016 (Paper No. CB(1)/860/15-16(04)).

(9) Clause 123

123. Powers of Court of Appeal

- (1) On an appeal from a determination of the Tribunal, the Court of Appeal may—
 - (a) allow the appeal;
 - (b) dismiss the appeal;
 - (c) vary or set aside the determination and, if the determination is set aside, substitute for the determination any other determination it considers appropriate; or
 - (d) remit the matter in question to the Tribunal with any direction that it considers appropriate, which may include a direction to make a fresh determination in respect of any matter specified by the Court of Appeal.
- (2) If the Court of Appeal under subsection (1)(c) varies, or substitutes a determination for, a determination of the Tribunal, the determination as varied or the substituted determination must be one that the Tribunal had power to make.
- ~~(3) On an appeal, the Court of Appeal may make any order as to costs that it considers appropriate.~~
- (3) On an appeal, the Court of Appeal—
 - (a) may make any order as to costs that it considers appropriate; and
 - (b) if it under subsection (1)(a) allows the appeal, or under subsection (1)(c) varies or sets aside a determination of the Tribunal, may by an order mentioned in paragraph (a) direct that there is to be included in any costs to be paid by the respondent to the appellant—
 - (i) the costs reasonably incurred by the appellant in relation to the proceeding before the Tribunal and the application for review in question; or
 - (ii) any fixed sum that it considers reasonable in respect of the costs mentioned in subparagraph (i).⁹

⁹ This draft CSA seeks to provide that the Court of Appeal may (i) make any order to costs that it considers appropriate; and (ii) where it allows an appeal (under clause 123(1)(a)) or varies or sets aside a determination of the Tribunal (under clause 123(1)(c)) include in any such order any costs to be paid by the respondent to the appellant incurred in relation to the Tribunal proceedings. A similar change is proposed to be made to clause 140 to achieve the same effect for RCT. The background of this CSA has been explained at paragraph 15 the Government's second response to issues raised at the meetings on 18 and 19 April 2016 (Paper No. CB(1)909/15-16(01)).

(10) Clause 144

144. Clawback order

- (1) A clawback order is an order that provides for either or both of the following—
- (a) that the officer repays or returns all or a specified part of the fixed or variable remuneration received by the officer ~~from~~ **in respect of services provided to the financial institution** during the controlled period;
 - (b) that the officer ceases to be entitled to receive all or a specified part of any fixed or variable remuneration that the financial institution had agreed during the controlled period to give, but had not yet given, to the officer.
- (1A) **The making of a clawback order mentioned in subsection (1)(b) terminates any liability of the financial institution under the Employment Ordinance (Cap. 57) or an agreement mentioned in that subsection to give to the officer the remuneration covered by the order.**
- (2) The making of a clawback order against an officer does not affect any criminal or civil liability incurred by the officer because of any act done, or omission made, by the officer as an officer.¹⁰

(11) Clause 171

- ~~(2) Subsection (1) applies to any person who holds or has held an office, appointment, employment or other role under this Ordinance, including as—~~
- ~~—(a) a resolution authority;~~
 - ~~—(b) a member, employee or agent of, or a consultant or advisor to, a resolution authority;~~
 - ~~—(c) a section 10 entity;~~
 - ~~—(d) an independent valuer;~~
 - ~~—(e) an authorized person; or~~
 - ~~—(f) an investigator.~~

¹⁰ This draft CSA seeks to set out explicitly that a clawback order made under the Bill terminates any liability of the FI under the Employment Ordinance (Cap. 57) or an agreement mentioned in that subsection to give to the officer the remuneration covered by the order. The background of this CSA has been explained at paragraph 12 of the Government's response to issues raised at the meetings on 3 May 2016 (Paper No. CB(1)909/15-16(03)).

(2) Subsection (1) applies to—

- (a) any person who holds or has held an office, appointment, employment or other role under this Ordinance, including as—
 - (i) a resolution authority;
 - (ii) a section 10 entity;
 - (iii) an independent valuer;
 - (iv) an authorized person; or
 - (v) an investigator;
- (b) a member, employee or agent of, or a consultant or advisor to, a resolution authority;
- (c) a member, employee or agent of, or a consultant or advisor to, a section 10 entity; and
- (d) a member, employee or agent of, or a consultant or advisor to, an independent valuer.¹¹

(12) Clause 172(5) and 172(6)

- (5) A resolution authority, ~~in disclosing any information in any of the circumstances mentioned in section 171(3) or in granting any consent under subsection~~ in granting any consent under subsection (3)(b) or (4), may impose any condition that it considers appropriate.
- (6) A person who contravenes subsection (4) and at the time of disclosure knew or ought reasonably to have known that the information, or the part of it, was previously disclosed to the person ~~under section 171(3) in reliance on subsection (3)~~ commits an offence unless the person proves that the person had reasonable grounds to believe that the disclosure by the person was—
 - (a) with the consent of the resolution authority;
 - (b) for seeking advice from, or the giving of advice by, counsel or a solicitor or other professional advisor acting or proposing to act in a professional capacity in connection with a matter

¹¹ This draft CSA seeks to enhance the certainty of the confidentiality provisions by making explicit that the members, employees or agents of, or the consultants or advisors to, a section 10 entity or an independent valuer are also covered by the confidentiality requirements under clause 171(1). The background of this CSA has been explained at paragraph 24 of the Government's response to issues raised at the meetings on 3 May 2016 (Paper No. CB(1)909/15-16(03)).

- arising under this Ordinance; or
- (c) of information that was available to the public.¹²

(13) Clause 186(2)

(2)凡有關非香港處置行動(或其部分)獲有關確認文書確認，則該行動(或部分行動)在香港產生的法律效力，**大致在相當程度上**相等於該行動(或部分行動)假若是根據香港法律作出和授權作出便會產生的法律效力。¹³

(14) Clause 194

- (1) A resolution authority may issue a code of practice about **the performance by it of any matter relating to the** functions given to it by this Ordinance.
- (2) The code may, in particular—
- (a) provide guidance on—
 - (i) the approach to, and procedures for, resolution planning and resolvability assessment (including the removal of impediments to orderly resolution);
 - (ii) how the resolution authority proposes to determine whether condition 1, 2 or 3 is met;
 - (iii) the procedure to be followed in connection with the making of any capital reduction instrument;
 - (iv) the selection of stabilization options;
 - (v) the procedure to be followed in connection with the application of any stabilization option;
 - (vi) the determination of compensation under Division 3 of Part 6, including assumptions to be made, principles to be applied and processes to be followed in making a valuation; or
 - (vii) how the resolution authority proposes to exercise its powers compatibly with the safeguard provided for by regulations made under section 75(1); or

¹² This draft CSA is technical in nature. The proposed parts to be deleted in clause 172(5) repeat what is already provided for in clause 171(8) in relation to a resolution authority's power to impose conditions on any disclosure of information under clause 171(3). Clause 172, however, concerns disclosure by FIs and so the ability of a resolution authority to impose conditions under clause 172(5) is only relevant where it is giving consent under clause 172(3)(b) or 172(4). The amendment to clause 172(6) is technical to correct the cross-reference.

¹³ Please refer to footnote 2.

- (b) provide guidance in relation to the governance, management and control of a bridge institution, asset management vehicle or TPO company, including guidance in relation to—
 - (i) the setting of objectives;
 - (ii) the content of the articles of association;
 - (iii) the content of reports required under this Ordinance; and
 - (iv) eventual disposal.
- (3) The code may also, in relation to the functions given to the resolution authority by this Ordinance provide guidance on the operation of any provision of this Ordinance.
- (4) A code of practice issued by a resolution authority under subsection (1) may incorporate or refer to a code of practice, or any part of a code of practice, from time to time issued by another resolution authority under that subsection.¹⁴

(15) Clause 199

199. Certain instruments are not subsidiary legislation

The following instruments are not subsidiary legislation—

- (a) a notice under section 6(1)(a) or (b) or (4);
- (b) a notice under section 7;
- (c) a Part 5 instrument;
- (d) a capital reduction instrument;
- (e) a recognition instrument;
- (f) a code of practice issued under section 194(1).¹⁵

(16) Clause 204

204. Section 2 amended (interpretation)

Section 2(1)—

¹⁴ This draft CSA seeks to expand clause 194 to enable resolution authorities to issue codes of practice about any matter relating to the functions given to them, including providing guidance on the operation of any provision of the Ordinance. In relation to the new clause 194(4), it is expected that the resolution authorities will issue their own code of practice governing issues common to all within scope FIs and providing for sector specific requirements. The draft CSA to clause 194(4) seeks to provide that a code of practice issued by a resolution authority may incorporate or refer to other codes of practice issued by other resolution authorities.

¹⁵ This draft CSA clarifies that a code of practice issued under clause 194(1) is not subsidiary legislation. The definition of “subsidiary legislation” and the criteria for determining whether a particular instrument is subsidiary legislation have been explained in paragraphs 83-84 of the Government’s response to the letter from the Legal Service Division dated 4 January 2016 (Paper No. CB(1)545/15-16(01)).

Add in alphabetical order

“*resolution authority* (處置機制當局) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (of 2015);

Resolution Compensation Tribunal (處置補償審裁處) ~~has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (of 2015);~~ means—

- (a) the Tribunal established by section 126(1) of the Financial Institutions (Resolution) Ordinance (of 2015); or
- (b) an additional tribunal established under section 126A(1) of that Ordinance;

Resolvability Review Tribunal (處置可行性覆檢審裁處) ~~has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (of 2015);~~” means—

- (a) the Tribunal established by section 110(1) of the Financial Institutions (Resolution) Ordinance (of 2015); or
- (b) an additional tribunal established under section 110A(1) of that Ordinance;¹⁶

(17) Clause 212

212. Schedule 2 amended (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, after paragraph (mb)—

Add

- “(mc) the Resolution Compensation Tribunal established by section 126(1) of the Financial Institutions (Resolution) Ordinance (of 2015) **or an additional tribunal established under section 126A(1) of that Ordinance;**
- (md) the Resolvability Review Tribunal established by section 110(1) of the Financial Institutions (Resolution) Ordinance (of 2015) **or an additional tribunal established under section 110A(1) of that Ordinance;**”¹⁷

¹⁶ This draft CSA seeks to expand the definition of RCT and RRT to cover additional tribunals established under the new clause 126A(1) and clause 110A(1) respectively. The same change is proposed for clauses 207 and 221 (which concern the consequential amendments to the Banking Ordinance (Cap. 155) and Payment Systems and Stored Value Facilities Ordinance (Cap. 584) respectively).

¹⁷ Please refer to footnote 16.

**(18) New clause before clause 213 under Division 7 of Part 15
212A. Section 10 amended (delegation and sub-delegation of
Commission’s functions)**

(1) After section 10(2)—

Add

“(2AA) However, subsection (2)(b) does not prevent a function specified in Part 3 of Schedule 2 from being delegated to the chief executive officer of the Commission for the purpose of the application of a stabilization option under the Financial Institutions (Resolution) Ordinance (of 2015) to any of the following—

- (a) a recognized clearing house;
- (b) a recognized exchange company that is designated under section 6(1)(b) of that Ordinance as a within scope financial institution;
- (c) a holding company (within the meaning of that Ordinance) or affiliated operational entity of an entity mentioned in paragraph (a) or (b).”.

(2) Section 10(8), after “Part 2” —

Add

“or 3”.¹⁸

(19) Clause 216

~~216. Section 378 amended (preservation of secrecy, etc.)~~

~~—(1) After section 378(3)(f)(v)—~~

~~**Add**~~

~~—“(va) a resolution authority;”.~~

~~—(2) After section 378(3)(i)(ii)—~~

~~**Add**~~

~~—“(iia) a resolution authority;”.~~

~~—(3) Section 378(6)(a), after “Commission”—~~

~~**Add**~~

¹⁸ This draft CSA, together with the draft CSA adding clause 218(3) (item 22 below), seek to enable the Securities and Futures Commission (SFC) to delegate certain functions under Part III of the Securities and Futures Ordinance (Cap. 571) (SFO), which are non-delegable (i.e. can be exercised by the SFC at board level only) under Part 2 of Schedule 2 to the SFO, for the purpose of the application of a stabilisation option to a recognised clearing house, a recognised exchange company, or its holding company or AOE. It is proposed that these functions be delegated to, and (after consultation with the chairman of the SFC) be exercised by, the chief executive officer of the SFC in a resolution situation so that the SFC can undertake necessary actions swiftly to facilitate resolution.

~~“, a resolution authority”.~~

216. Section 378 amended (preservation of secrecy, etc.)

(1) After section 378(3)(ea)—

Add

“(eb) to the Resolvability Review Tribunal;

(ec) to the Resolution Compensation Tribunal;

(ed) to a resolution authority, for the purpose of enabling or assisting the resolution authority to perform its functions under the Financial Institutions (Resolution) Ordinance (of 2015);”.

(2) After section 378(3)(g)—

Add

“(ga) to an authority in a place outside Hong Kong, if—

(i) that authority performs functions in that place broadly comparable to those of a resolution authority in Hong Kong; and

(ii) in the opinion of the Commission—

(A) that authority is subject to adequate secrecy provisions in that place; and

(B) the information is necessary to enable or assist that authority to perform functions in that place broadly comparable to those of a resolution authority in Hong Kong.”.

(3) After section 378(3)(i)(ii)—

Add

“(iia) the Resolvability Review Tribunal;

(iib) the Resolution Compensation Tribunal;

(iic) a resolution authority, for the purpose of enabling or assisting the resolution authority to perform its functions under the Financial Institutions (Resolution) Ordinance (of 2015);”.

(4) Section 378(7), after “(g)(i)”—

Add

“, (ga)”.

(5) Section 378(11)(a), after “(g)(i)”—

Add
“, (ga)”.¹⁹

(20) New clause after Clause 216 - Clause 216A

216A. Section 381B amended (disclosure by Monetary Authority)

(1) After section 381B(1)(e)—

Add
“(ea) to the Resolvability Review Tribunal;
(eb) to the Resolution Compensation Tribunal;
(ec) for the purpose of enabling or assisting a resolution authority to perform its functions under the Financial Institutions (Resolution) Ordinance (of 2015), to the resolution authority;”.

(2) After section 381B(3)—

Add
“(3A) Despite section 381A(2), the Monetary Authority may disclose information to an authority in a place outside Hong Kong if—
(a) that authority performs functions in that place broadly comparable to those of a resolution authority in Hong Kong; and
(b) in the opinion of the Monetary Authority—
(i) that authority is subject to adequate secrecy provisions in that place; and
(ii) the information is necessary to enable or assist that authority to perform functions in that place broadly comparable to those of a

¹⁹ This draft CSA seeks to enable the SFC to disclose information to the RRT and RCT as and when necessary. It is relevant to note that clause 208 amends section 120 (official secrecy) of the Banking Ordinance (Cap. 155) (BO) to enable the Monetary Authority to disclose information to the Tribunals. Similarly, clause 205 amends section 53 (secrecy) of the Insurance Companies Ordinance (ICO) to allow disclosure of information to the Tribunals. Also, this CSA seeks to align the SFO provisions that enable disclosure of information to a resolution authority or to a resolution authority in a place other than in Hong Kong with those under the BO and ICO (as introduced by the consequential amendments under clauses 205, 206, 208 and 209), and to make related amendments.

resolution authority in Hong Kong.”²⁰

(21) **Clause 217**

217. Schedule 1, Part 1 amended (interpretation)

Schedule 1, Part 1, section 1—

Add in alphabetical order

“affiliated operational entity (相聯營運實體) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (of 2015);

resolution authority (處置機制當局) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (of 2015);

Resolution Compensation Tribunal (處置補償審裁處) means—

- (a) the Tribunal established by section 126(1) of the Financial Institutions (Resolution) Ordinance (of 2015); or
- (b) an additional tribunal established under section 126A(1) of that Ordinance;

Resolvability Review Tribunal (處置可行性覆檢審裁處) means—

- (a) the Tribunal established by section 110(1) of the Financial Institutions (Resolution) Ordinance (of 2015); or
- (b) an additional tribunal established under section 110A(1) of that Ordinance;

stabilization option (穩定措施) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (of 2015);

within scope financial institution (受涵蓋金融機構) has the meaning given by section 2(1) of the Financial Institutions

²⁰ This draft CSA seeks to provide for a disclosure gateway in respect of Over-the-Counter derivative information that has come into the knowledge of the Monetary Authority, through performance of its related functions under the SFO, to the RRT, RCT and, in specific circumstances, to a resolution authority or to a resolution authority in a place other than Hong Kong.

(Resolution) Ordinance (of 2015).”²¹

(22) Clause 218

218. Schedule 2 amended (Securities and Futures Commission)

(1) Schedule 2, Part 2, section 2(89)—

Repeal the full stop

Substitute a semicolon.

(2) Schedule 2, Part 2, after section 2(89)—

Add

“(90) to recommend the designation of a recognized exchange company as a within scope financial institution under section 6(1)(b) of the Financial Institutions (Resolution) Ordinance (of 2015);

(91) to make an application under section 143(1) of the Financial Institutions (Resolution) Ordinance (of 2015);

(92) to issue a code of practice under section 194 of the Financial Institutions (Resolution) Ordinance (of 2015).”.

(3) [Schedule 2, after Part 2—](#)

Add

“Part 3

Functions of Commission Delegable for Resolution

A function mentioned in section 2(12), (13), (14), (21), (22), (23), (24), (25), (26), (27), (28), (33), (34), (35), (36), (37), (38), (39), (40), (46), (47), (48), (49) or (50) of Part 2 of this Schedule.”²²

(23) Schedule 5, section 1

Add the proposed definition (in alphabetical order) -

clearing participant (結算所參與者) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);²³

²¹ This draft CSA seeks to add into the SFO the definitions which appear in the CSAs to clauses 212A, 216 and 216A.

²² Please refer to footnote 18.

²³ This draft CSA is a technical amendment to introduce a definition of clearing participant into Schedule 5 for the purposes of the draft CSA in item 24.

(24) Schedule 5, section 2

(r) liabilities arising from participation in **designated** clearing and settlement systems and owed to such systems or to the operators of, or participants in, such systems;

(ra) liabilities arising from participation in the services provided by a recognized clearing house and owed to the clearing house or to its clearing participants;²⁴

(25) Schedule 8, section 10(6)(a)

(6)The circumstances are—

(a) there is an application mentioned in subsection (3)~~(b)~~; and²⁵

²⁴ This draft CSA seeks to achieve greater clarity in reflecting our policy intention to exclude from bail-in liabilities arising from participation in, and owed to the system, its operator or participants as appropriate, those clearing and settlement systems already considered systemically important and that are hence designated or recognised under the relevant Ordinance (namely the Payment Systems and Stored Value Facilities Ordinance (Cap. 584) and the SFO.

²⁵ This draft CSA seeks to make clear that the reference should be to the entire subsection (3). The same change is proposed for section 10(6)(a) of Schedule 9.