

LEGISLATIVE COUNCIL BRIEF

**Banking Ordinance
(Chapter 155)**

BANKING (AMENDMENT) BILL 1999

INTRODUCTION

At the meeting of the Executive Council on 11 May 1999, the Council ADVISED and the Chief Executive ORDERED that the Banking (Amendment) Bill 1999 (at Annex A) should be introduced into the Legislative Council, to bring Hong Kong's banking supervisory regime fully in line with the Basle Committee's Core Principles for Effective Banking Supervision (the Core Principles) and to improve the operation of the Banking Ordinance in the light of market developments.

BACKGROUND AND ARGUMENT

Core Principles

2. In September 1997, the Basle Committee on Banking Supervision published the Core Principles which were endorsed by the central banks of the G10¹ countries. The Core Principles serve as a basic reference for supervisory authorities around the world to review their existing supervisory arrangements and to initiate a programme designed to address any deficiencies as quickly as practicable within their legal authority.

3. Hong Kong's banking supervision framework already substantially complies with the Core Principles except in the following areas:

- (a) there are no formal requirements for authorized institutions (AIs)² to notify or seek the approval of the Hong Kong Monetary Authority (MA) before making major acquisitions or investments, except in the case of the acquisition or

¹ The G10 countries are Canada, Belgium, France, Germany, Italy, Japan, the Netherlands, Sweden, the United Kingdom and the United States.

² Licensed banks, restricted licence banks and deposit-taking companies are collectively known as authorized institutions which are under the supervision of the MA.

establishment of overseas banking subsidiaries;

- (b) the MA is not legally permitted to disclose information of individual customers of AIs to an overseas supervisory authority;
- (c) the MA's supervisory power to bring about timely corrective actions on a problem AI may be disrupted by a winding-up petition against the AI presented by creditors; and
- (d) there are a few cases of existing AIs in Hong Kong which are part of parallel banking structures (a holding company holding subsidiary banks in different jurisdictions) over which there is no consolidated supervision.

4. It is our policy that the supervisory framework in Hong Kong should conform as much as possible to international supervisory standards. The deficiencies mentioned in paragraph 3(a), (b) and (c) above can be addressed by making appropriate amendments to the Ordinance. The issue of parallel banking structure in (d) is more complicated and requires the co-operation of the respective overseas banking supervisors. This is being addressed through ring-fencing the institutions concerned in Hong Kong and appropriate discussions with the relevant supervisors.

Major acquisitions or investments by AIs

5. Core Principle 5 provides that banking supervisors must have the authority to establish criteria for reviewing major acquisitions or investments made by an AI and ensuring that corporate affiliations or structures do not expose the AI to undue risks or hinder effective supervision. In these instances, the banking supervisor will determine if the institution has both the financial and managerial resources to make the acquisition or investment. The supervisor must clearly define what types and amounts of investments need prior approval and notification.

6. In determining what constitutes a major acquisition or investment in a company by an AI, the main supervisory concern is how the proposed acquisition or investment would affect the financial position of the institution, such as its capital base or profitability. According to general accounting conventions, a 5% effect on profits, capital or assets would normally be considered material.

7. In view of the above and the fact that section 87 of the

Ordinance already limits an AI's acquisition or holding of shares in any other company in aggregate to 25% of its capital base, it would be appropriate to require a locally incorporated AI to seek the MA's prior approval of any major acquisition or investment in a company (including establishment of a company) which is 5% or more of the capital base of the AI except in certain specific cases³.

Disclosure of information about individual customers

8. In Hong Kong, section 121(3) of the Ordinance prohibits the sharing of information about individual customers of a bank with an overseas supervisory authority. Core Principle 25 provides that host banking supervisors of the local operations of foreign banks must have powers to share information needed by the home country supervisors of those banks for the purpose of carrying out consolidated supervision. In the view of the Basle Committee, this would include information about individual customers. It is therefore proposed that the current restriction under section 121(3) on disclosure of individual customers' information to overseas supervisors be removed.

9. To address the concern about lack of control on the onward disclosure of information by the receiving authority, it is proposed that new provisions be added to enable the MA to attach a condition to any disclosure made under section 121 to require the MA's consent for any onward transmission of such information. Such a condition will be mandatory in the case of proposed disclosure of individual customers' information.

Provisions relating to winding-up petitions of AIs

10. Core Principle 22 provides that banking supervisors must have at their disposal adequate supervisory measures to bring about timely corrective actions when banks fail to meet prudential requirements, when there are regulatory violations, or where depositors are threatened in any other way.

11. At present, the MA possesses a range of powers to accomplish the goals set out in Core Principle 22. For example, under section 52(1)(C), the MA may appoint a Manager to take control of the affairs, business and property of an AI when, for example, the MA is of the opinion that the AI is carrying on its business in a manner detrimental to

³ The specific cases are where an AI acquires the shares of a company in the course of satisfaction of debts due to the AI, or under an underwriting or sub-underwriting contract for shorter than a specified period.

the interests of its depositors or creditors. The appointment of the Manager seeks to enable a troubled institution to be nursed back to health, or alternatively to enable the MA to take quick action to safeguard the assets of the AI until a liquidator can be found. These measures are ultimately aimed to protect the interests of depositors and maintain the stability of the banking sector.

12. However, the Ordinance does not prevent any unsatisfied creditor from petitioning to wind-up an AI or from taking legal proceedings against the assets of the AI during the period of the Manager's appointment. Moreover, there are no procedural safeguards to ensure that the regulator's views are heard when a winding-up petition of an AI is presented by a person other than the Financial Secretary. This is not a satisfactory situation as the Manager's efforts to effectively discharge his responsibilities might be disrupted.

13. We therefore propose that a provision be introduced in section 122 of the Ordinance to give the MA the right to be heard in respect of a winding-up petition against an AI other than one presented by the Financial Secretary and to support or oppose such a petition. Such a provision will enable the court to take the regulator's view into account before it decides on whether to wind up a regulated institution. A similar provision can be found in the Insurance Companies Ordinance (Cap 41).

Publication and submission of annual audited accounts

Section 60(1) and (2)

14. Under section 60(1) of the Ordinance, every AI incorporated in Hong Kong is required to publish its audited annual accounts and the auditors' report (in accordance with the Tenth Schedule) in one English language newspaper and one Chinese language newspaper not later than 4 months after the close of each financial year. Section 60(2) requires a copy of such newspaper notice to be lodged with the MA 7 days before publication.

15. The introduction of the Best Practice Guide on Financial Disclosure by AIs in 1994 and further subsequent disclosure requirements in the following years have resulted in a significant increase in the amount and quality of disclosure by AIs in their annual accounts. The length of the financial statements and hence the cost of publishing them in newspapers have significantly increased. During previous discussions on the financial disclosure requirements of AIs, the banking industry has

requested a review of this particular requirement under section 60(1).

16. It is proposed that the requirements of section 60(1) should be removed for the following reasons -

- (a) the main focus of the majority of the public seems to be on the broad financial indicators which give them a flavour of the overall financial performance and the strength of the AIs. Such information is generally widely reported by the media well before the publication of the annual accounts under section 60(1);
- (b) although listed companies are required to publish limited financial information relating to the profit and loss account in newspapers, there are no corresponding requirements to publish full accounts and other detailed financial information in newspapers under the Companies Ordinance (Cap 32) nor are there such requirements in other major financial centres such as New York and London. Moreover, section 60(1) of the Ordinance creates an inequality of treatment between local AIs and foreign AIs as the requirement applies only to the former; and
- (c) the improvement in financial disclosure by AIs in recent years has already contributed to greater transparency of the performance and financial strength of AIs and as a result, better informed analysis can now be made and disseminated in different ways to the public.

17. It is proposed that the current provisions under section 60(1) be replaced by a more general provision giving the MA a discretionary power to require all AIs to publish or disclose information relating to their financial affairs. The MA will specify in a legal notice the requirements regarding the amount of information to be disclosed and the manner and timing in which this should be published. It is intended that other less costly ways of disclosure, e.g., publication in the form of a press notice containing the relevant financial information, would be required. This approach will ensure that adequate transparency on the accounts of AIs is maintained whilst at the same time addressing the AIs' concern about the cost of publishing their accounts in newspapers. After the proposal has come into operation, the MA's Best Practice Guide on Financial Disclosure can be gazetted under the new section.

Section 60(5)

18. Under section 60(5) of the Ordinance, every AI incorporated outside Hong Kong is required to lodge with the MA, not later than 6 months after each financial year end, a copy of its audited annual balance sheet and profit and loss account.

19. A number of AIs incorporated outside Hong Kong do not normally prepare audited accounts because their home countries' regulations require only the publication and submission of the holding company's consolidated accounts.

20. The MA considers that the consolidated accounts should be acceptable for the purpose of assessing the financial position of the AIs concerned and, from a practical point of view, it would be unnecessary to require these AIs to prepare a separate set of accounts for the purpose of complying with section 60(5) of the Ordinance. It is therefore proposed that foreign AIs be allowed to lodge either a copy of their audited annual accounts or, with the MA's prior approval in writing, a copy of the consolidated accounts of their holding company.

Other amendments

21. The other proposed amendments seek to enable the MA to recognise a wider range of banking supervisory authorities outside Hong Kong, to simplify the procedures for seeking the MA's consent to become an employee of an AI, and to enable the MA to impose conditions on existing controllers of AIs should the need arise. Amendments have also been made to bring other provisions of the Ordinance up to date with changing market developments and introduction of new banking products. A summary of such amendments is at Annex B.

THE BILL

22. The main provisions of the Bill are as follows –

- (a) the introduction of a new provision (new section 51B at clause 4) to require a locally incorporated AI to seek the MA's prior approval of any major acquisition or investment in a company (including establishment of a company) which constitutes 5% or more of the capital base of the AI;
- (b) the replacement of section 121(3) by a provision which

provides the MA with the discretionary power to attach a condition to any disclosure made under Section 121 requiring the MA's consent for any onward transmission of such information, as well as a specific mandatory obligation on the MA to attach such a condition in the case of any disclosure of individual customers' information (clause 12);

- (c) the amendment of relevant provisions (section 60(1) and (2) at clause 6) to provide the MA with a discretionary power to require all AIs to publish or disclose information relating to their financial affairs and to introduce a new provision (section 60A at clause 7) which will enable the MA to specify the requirements by way of subsidiary legislation for AIs to publish or disclose information relating to the state of affairs or profit and loss of the institutions and the manner and timing of such publication or disclosure;
- (d) the amendment of the relevant provision (section 60(5) at clause 6) to allow foreign AIs to lodge either a copy of their audited annual accounts or, with the MA's prior approval in writing, a copy of the consolidated accounts of their holding company; and
- (e) the introduction of a new provision (new section 122(7) at clause 13) to give the MA the right to attend a court hearing on a winding up petition in respect of an AI (other than one presented by the Financial Secretary) and support or oppose such a petition.

The existing provisions which are being amended are at Annex C.

LEGISLATIVE TIMETABLE

23. The legislative timetable will be -

Publication in the Gazette	14 May 1999
First Reading and commencement of Second Reading Debate	26 May 1999
Resumption of Second Reading Debate, Committee Stage and Third Reading	to be notified

HUMAN RIGHTS IMPLICATIONS

24. The Department of Justice advises that the proposed legislative amendments are consistent with human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

25. The proposed legislative amendments do not affect the current binding effect of the existing provisions of the Banking Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

26. There are no financial or staffing implications.

ECONOMIC IMPLICATIONS

27. Bringing Hong Kong's banking supervision framework fully in line with the international standard will enhance Hong Kong's status as an international financial centre.

PUBLIC CONSULTATION

28. The Banking Advisory Committee, the Deposit-taking Companies Advisory Committee, the Hong Kong Association of Banks and the Deposit-taking Companies Association have been consulted. They support the legislative proposals.

29. At the Legislative Council Panel on Financial Affairs meeting on 3 May 1999, the Administration briefed Members on the main proposals of the Bill.

PUBLICITY

30. A press release will be issued on 14 May 1999.

ENQUIRIES

31. Enquiries on this Brief may be directed to Mr Edward Mak, Assistant Secretary for Financial Services (telephone number : 2527 3974).

Financial Services Bureau
14 May 1999
G4/16/19C

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A BILL
To

Amend the Banking Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Banking (Amendment) Ordinance 1999.
- (2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Financial Services by notice in the Gazette.

2. Interpretation

Section 2(9) of the Banking Ordinance (Cap. 155) is amended by repealing "primary" and substituting "a".

3. Control of establishment, etc. of overseas banking corporations

Section 51A(4) is amended by adding ", with effect from such time as is specified in the notice (being a time reasonable in all the circumstances of the case)," after "attach" and "cancel" respectively.

4. Section added

The following is added in Part IX -

"51B. Acquisition by authorized institutions incorporated in Hong Kong of share capital in companies

- (1) In this section

-

"relevant day" (有關日期) means the day of commencement of section 3 of the Banking (Amendment) Ordinance 1999 (of 1999);

"value" (價值) has the meaning assigned to it in section 79(1).

(2) An authorized institution incorporated in Hong Kong shall be subject to a condition that it shall not -

- (a) acquire (whether by one acquisition or a series of acquisitions), and by whatever means, all or part of the share capital of a company (and whether or not the company was established by the institution) to a value of 5% or more of the capital base of the institution at the time of the acquisition unless the approval of the Monetary Authority has been given to the proposed acquisition of such share capital;
- (b) if any such approval granted in respect of the company is revoked under subsection (5), hold share capital in the company to a value of 5% or more of the capital base of the institution on or after the time such revocation comes into effect.

(3) Approval under subsection (2) (a) shall be deemed to have been granted in respect of any company -

- (a) in relation to which an authorized institution incorporated in Hong Kong held, immediately before the relevant day, share capital to a

value of 5% or more of the capital base of the institution;

- (b) in relation to which an authorized institution incorporated in Hong Kong comes to hold, not later than 3 months after the relevant day, share capital to a value of 5% or more of the capital base of the institution where the acts or circumstances by virtue of which the institution comes to hold such share capital substantially occurred before the relevant day.

(4) The Monetary Authority may at any time, by notice in writing served upon an authorized institution, attach, with effect from such time as is specified in the notice (being a time reasonable in all the circumstances of the case), to an approval granted under subsection (2) (a), or deemed to have been granted under subsection (3), in respect of any company in relation to which the institution is to come to hold, or holds, share capital to a value of 5% or more of the capital base of the institution, such conditions, or amend or cancel, with effect from such time as is specified in the notice (being a time reasonable in all the circumstances of the case), any conditions so attached, as he may think proper.

- (5) The Monetary Authority may revoke -
 - (a) in such case as he thinks fit; and

(b) with effect from such time as is specified by him, being a time reasonable in all the circumstances of such case, an approval granted under subsection (2) (a), or deemed to have been granted under subsection (3), in respect of any company.

(6) Where the Monetary Authority refuses to grant approval under subsection (2) (a) or revokes an approval under subsection (5), he shall notify the authorized institution concerned in writing of the refusal or revocation.

(7) Every director and every manager of an authorized institution which contravenes the condition in subsection (2) or any condition attached under subsection (4) 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.

(8) For the purposes of this section, the capital base of an authorized institution means the capital base of the institution as determined in accordance with the Third Schedule except that, for those purposes, any requirement under section 79A(1) or 98(2) referred to in that Schedule shall not apply in determining such capital base.

(9) For the purposes of this section, share capital of a company acquired by an authorized institution shall not include share capital so acquired -

- (a) in the course of the satisfaction of debts due to the institution; or
- (b) under an underwriting or subunderwriting contract for a period not exceeding 7 working days, or such further period as the Monetary Authority approves in writing, and subject to such conditions as he may think proper to attach thereto in any particular case."

5. Audit

Section 59(4) is repealed.

6. Publication of audited balance sheet, etc.

Section 60 is amended -

- (a) by repealing subsections (1) and (2);
- (b) in subsection (3) -
 - (i) by repealing "Where an authorized institution has complied with subsection (1) in respect of a financial year, it shall, as soon as is practicable thereafter" and substituting "Every authorized institution incorporated in Hong Kong shall, not later than 4 months after the close of each financial year, or within such further period as the Monetary Authority approves in writing,";
 - (ii) by repealing paragraphs (d) and (e);

- (c) in subsection (5), by repealing "Every" and substituting "Subject to subsection (5A), every";
- (d) by adding -
 - "(5A) With the approval in writing of the Monetary Authority, an authorized institution may, instead of complying with subsection (5) by lodging with the Monetary Authority the documents required under that subsection, comply with that subsection by lodging with the Monetary Authority the like documents of its holding company on a consolidated basis.";
- (e) in subsection (8), by repealing "(2),";
- (f) in subsection (9), by repealing "(1), (2),";
- (g) in subsection (11), by repealing "and the Tenth Schedule".

7. Section added

The following is added -

"60A. Publication of information relating to financial affairs

(1) Without prejudice to the operation of section 60, the Monetary Authority may, by notice in the Gazette, and subject to such conditions, if any, as are specified in the notice, require every authorized institution, or every authorized institution belonging to a class of authorized institutions, to publish or disclose information -

- (a) relating to such state of affairs, or profit and loss, of the institution as is specified in the notice; and

(b) in such manner, and at such time or times, as are specified in the notice.

(2) It is hereby declared that a notice under subsection (1) is subsidiary legislation.

(3) Every director and every manager of an authorized institution which contravenes subsection (1) 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.

(4) The Monetary Authority may from time to time cause guidelines to be prepared and published in the Gazette -

(a) for the guidance of authorized institutions the subject of a notice under subsection (1) in relation to their complying with that subsection; and

(b) which are not inconsistent with this Ordinance."

8. Provisions applicable to persons proposing to become controllers, and to certain existing controllers, of authorized institutions incorporated in Hong Kong

Section 70 is amended -

(a) by adding -

"(6A) For the avoidance of doubt, it is hereby declared that a conditional notice of consent served on a person who has become the

minority shareholder controller of an authorized institution may revoke a prior notice of consent, if any, served on the person in relation to the person becoming or being, as the case may be, such a controller.";

(b) in subsection (9), by repealing "conditional notice of consent or".

9. Certain persons prohibited from acting as employees of authorized institutions except with consent of Monetary Authority

Section 73 is amended by adding -

"(1D) Where the Monetary Authority has granted consent under subsection (1) or (1A) to a person where paragraph (c) of that subsection is applicable to the person, then that paragraph shall not again be applicable to the person in the case, but only in the case, of the authorized institution referred to in that paragraph which gave rise to that paragraph being applicable to the person."

10. Limitations on advances by authorized institutions

Section 81 is amended -

(a) in subsection (2) -

(i) in paragraph (b), by repealing "and" at the end;

(ii) by adding -

"(ba) financial exposure, being financial exposure declared in a notice under subsection (2A) to be financial exposure falling within this paragraph, of the institution to; and";

(b) by adding -

"(2A) The Monetary Authority may, by notice in the Gazette, and subject to such conditions, if any, as are specified in the notice, declare financial exposure specified in the notice to be financial exposure falling within subsection (2) (ba).

(2B) It is hereby declared that a notice under subsection (2A) is subsidiary legislation.";

(c) in subsection (6), by adding -

"(kc) any financial exposure to The Hong Kong Mortgage Corporation Limited arising from the obligations placed upon it for the purposes of the Mortgage Insurance Programme;".

11. Limitation on advances to employees

Section 85(1) is amended by adding ", without the written consent of the Monetary Authority given generally or in any particular case or class of case," after "not".

12. Disclosure of information relating to authorized institutions

Section 121(3) is repealed and the following substituted -

"(3) The Monetary Authority -

- (a) may, subject to paragraph (b), attach a condition to any disclosure of information made pursuant to this section;
- (b) shall, to the extent that any disclosure of information made pursuant to this section relates to the affairs of any individual customer of an authorized institution or a local representative office, attach a condition,

that neither -

- (i) the person to whom the information has been disclosed; nor
- (ii) any person obtaining or receiving the information (whether directly or indirectly) from the person referred to in paragraph (i),

shall disclose that information to any other person without the consent of the Monetary Authority."

13. Winding-up of authorized institutions

Section 122 is amended by adding -

"(7) Where a petition for the winding up of an authorized institution is presented by a person other than the Financial Secretary, a copy of the petition shall be served on the Monetary Authority and he shall be entitled to be heard on the petition and to call, examine and cross-

examine any witness and, if he so thinks fit, support or oppose the making of a winding-up order."

14. Appeals

Section 132A(1) is amended -

- (a) in paragraph (a), by adding "51B(5)," after "51A(5),";
- (b) in paragraph (d), by adding ", 51B(2) (a)" after "51A(2)";
- (c) in paragraph (e) -
 - (i) by repealing "or 51A(2)" and substituting ", 51A(2) or 51B(2) (a)";
 - (ii) by repealing "or 51A(4)" and substituting ", 51A(4) or 51B(4)".

15. Power to amend Schedules

Section 135(3) is amended by repealing ", Tenth".

16. Transitional provisions in relation to amendments made by Banking (Amendment) (No. 2) Ordinance 1991

Section 150 is amended -

- (a) by repealing subsections (2) and (3);
- (b) in subsection (7), by repealing "(3),";
- (c) by adding -
 - "(11) Where immediately before the commencement of section 16 of the Banking (Amendment) Ordinance 1999 (of 1999) a person was lawfully a controller of an

authorized institution wholly or partly by virtue of any of the provisions of subsections (2) and (3), then, on and after that commencement -

- (a) the repeal effected by that section of those subsections shall not of itself cause the person to cease to be such a controller;
- (b) the previous operation of those subsections shall not prevent a conditional notice of consent under section 70 from being served on such a controller."

17. Capital Adequacy Ratio

The Third Schedule is amended -

- (a) by repealing "[ss. 98 & 135(3)]" and substituting "[ss. 51B, 98 & 135(3)]";
- (b) in paragraph 1, in the definition of "residential mortgage", in paragraph (b), by adding "at the time the mortgage was approved by the authorized institution concerned" after "property".

18. Notice relating to authorized institution's audited annual accounts

The Tenth Schedule is repealed.

Explanatory Memorandum

The object of this Bill is to amend the Banking Ordinance (Cap. 155) to -

- (a) empower the Monetary Authority to recognize a wider range of banking supervisory authorities outside Hong Kong (clause 2);
- (b) require authorized institutions to have the approval of the Monetary Authority before acquiring the share capital of a company to a value of 5% or more of the capital base of the institution (new section 51B at clause 4);
- (c) modify the provisions relating to authorized institutions' accounts and reports thereon required to be published or lodged with the Monetary Authority (clause 6);
- (d) empower the Monetary Authority to require, by notice in the Gazette, authorized institutions to publish or disclose information relating to such of their state of affairs or profit and loss as is specified in the notice (new section 60A at clause 7);
- (e) empower the Monetary Authority to serve a conditional notice of consent under section 70 on a controller of an authorized institution at any time (clause 8);
- (f) provide that a person to whom a consent has been granted under section 73(1) or (1A) where paragraph (c) of that section is applicable does not have to

seek a further such consent where he seeks to be employed by another authorized institution unless he was a director or concerned in the management of yet another separate authorized institution which has been wound up or the authorization of which has been revoked (clause 9);

- (g) empower the Monetary Authority to declare, by notice in the Gazette, financial exposure specified in the notice to be financial exposure to be taken into account for the purposes of section 81 and to exempt an authorized institution's certain financial exposure to The Hong Kong Mortgage Corporation Limited from the limits imposed by the other provisions of that section (clause 10);
- (h) empower the Monetary Authority to consent to employees of authorized institutions being provided with facilities specified in section 85(2) in excess of one year's salary for the employees respectively (clause 11);
- (i) modify the provisions relating to the Monetary Authority's power to disclose information to certain regulatory authorities outside Hong Kong (clause 12);
- (j) confer on the Monetary Authority the right to be heard in respect of a winding-up petition against an authorized institution (clause 13);
- (k) amend the definition of "residential mortgage" in the Third Schedule to clarify that the market value

of the property concerned means the market value of the property as at the time the mortgage concerned was approved by the authorized institution (clause 17); and

- (1) consequentially amend or repeal provisions (clauses 3, 5, 14, 15, 16 and 18).

Summary of Other Amendments

Definition of “relevant banking supervisory authority outside Hong Kong”

Clause 2 of the Bill proposes to remove the word “primary” in *section* 2(9) of the Ordinance to enable the MA to recognise a wider range of banking supervisory authorities outside Hong Kong.

Imposition of *conditions on existing controllers*

2. Under section 70 of the Ordinance, the MA can only impose conditions on persons proposing to become controllers of an AI, but not on existing controllers. If an existing controller acts contrary to the interest of depositors or if there is evidence of adverse findings against the controller, the only sanction available to the MA at the moment is to remove the controller from the position. However, there could be circumstances that may not justify an outright removal of the controller from the office, nor would this course of action serve the best interest of the AI. Therefore, it is proposed that section 70 should be amended to enable the MA to impose conditions on an existing controller at any time after the controller’s appointment has been approved (*see clause 8 of the Bill*).

MA's consent to become an employee of an AI under *section 73*

3. Where a person has been a director or concerned in the management of an AI which has been wound up or the licence or registration of which has been revoked, he is required under *section 73*(1)(c) and 73(1A)(c) to obtain the written consent of the MA to become an employee of another AI. This section applies in such a manner that the person concerned is required to seek the MA's consent every subsequent time he changes employment to another AI.

4. It is considered that the present *section 73* unnecessarily complicates the procedure for obtaining consent of the MA, and should be amended so that only the first employment by another AI immediately following the employment (as director or in a management position) with an AI which has been wound up or revoked of its licence needs the MA's consent. The MA would have reviewed the applicant's past position in the wound up or revoked AI, and if he is satisfied that the applicant has no involvement in any misconduct or circumstances leading to the winding up or revocation, consent would be granted. There should therefore be no need to go through the same process again in any further subsequent employment by another AI, unless this follows a directorship or management position in yet another separate wound up or revoked AI. The Bill thus amends *section 73* by adding a new subsection (1D) which will achieve this purpose (see clause 9 of the Bill).

Financial exposure under *section 81(2)*

5. Section 81 of the Ordinance is intended to regulate concentration of credit risk and provides that an AI incorporated in Hong Kong must not incur financial exposure to any one person of more than 25% of its capital base. For the purposes of this section, the exposure to a group of related persons is treated as a single exposure. The limit may be applied to AIs on a solo or a consolidated basis or both. There are various statutory exemptions in relation, for example, to exposures to other banks and AIs.

6. Financial exposure to a counterparty is defined in *section 81(2)* as:

- loans, advances and credit facilities given to that counterparty;
- holdings of securities or debentures issued by that counterparty; and
- off-balance sheet contingent commitments to that counterparty (referred to in the Third Schedule, Table B of the Ordinance).

7. Past experience has indicated that this definition of financial exposure may not be sufficiently comprehensive. It is considered that there is a need to take account of changing market developments and the

introduction of new products which may, due to their particular technical/legal nature or otherwise, not be considered as financial exposure and thus not be required to comply with the prudential limits in *section* 81. This would undermine the effectiveness of our regime in regulating the concentration risks of AIs.

8. It is therefore proposed that *section* 81(2) be amended by adding thereto a provision which would give the MA the general power to specify by notice in the Gazette from time to time any new items of risk exposure as financial exposure. Such legal notice would be subsidiary legislation which would be subject to the negative vetting of the Legislative Council (see clause 10 of the Bill).

Exemption of Exposure under the Mortgage Insurance Programme of The Hong Kong Mortgage Corporation Limited

9. AIs are subject to the MA's guideline on 70% loan-to-value ratio in relation to residential mortgage lending. Under the Mortgage Insurance Programme (the Programme) of The Hong Kong Mortgage Corporation Limited (HKMC), an AI will be able to grant a top-up mortgage loan up to 15% of the value of property on the basis of a guarantee issued by the HKMC. In effect, the Programme transfers an AI's exposure of that part of the mortgage loan from the borrower to the HKMC which is an entity wholly owned by the Government. The HKMA considers that the risk to AIs arising from the Programme is low

and so it is appropriate to grant a specific exemption to such exposure. It should be noted that there is already a similar exemption in this section given to the Housing Authority in relation to the guarantees it gives for the purposes of the Home Ownership Scheme and Public Sector Participation Scheme. It is therefore proposed that section 81 be amended by adding a subsection (6)(kc) to grant a specific exemption to the exposure under the Mortgage Insurance Programme of the HKMC (see clause 10 of the Bill).

Limitation on advances to employees under *section 85*

10. With the sharp decline in property prices in recent years, some staff property mortgage loans of authorized institutions secured against the relevant properties have had their collateral value substantially reduced, and many of the loans are in negative equity. This has resulted in a significant increase in the unsecured portion of the loans which in turn has resulted in technical breaches of the limit (one year's salary) under *section 85* in terms of the aggregate unsecured facilities granted to an employee. Clause 11 of the Bill introduces an amendment to Section 85 which empowers the MA to grant consent to AIs to exceed the limit under this section either generally or in any particular case. Where the MA is satisfied that the prudential supervision of the AIs is not adversely affected, the AIs may be allowed to exceed the statutory limit on unsecured credits to their own staff in these special circumstances.

Definition of “residential mortgage” in the Third Schedule of the

Ordinance

11. The Third Schedule specifies how the capital adequacy ratio (CAR) of an authorized institution incorporated in Hong Kong, required under *section* 98 of the Ordinance, should be calculated.

12. As one of the items of exposure of an AI measured against its capital base for the purpose of the computation of CAR, residential mortgages are assigned a risk weight of 50% of their value under Table A (Category V) of the Third Schedule.

13. In the definition of “residential mortgage” in paragraph 1 of the Third Schedule, condition (b) stipulates that the principal sum of the mortgage does not exceed 90% of the purchase price or the market value of the property, whichever amount is the lower. It is not specific, however, as to at what time the market value of the property should be determined.

14. As a result of the sharp decline in property value in recent years, the MA has received enquiries as to the proper interpretation of the definition of “residential mortgage”. The concern is that many of the properties against which residential mortgages were granted in the past by AIs would have exceeded the 90% loan-to-value ratio at current market prices. This would raise the question of whether such loans still meet the definition of "residential mortgage" under the Banking Ordinance and therefore whether the concessionary 50% risk weighting still applies for

the purposes of calculating the capital adequacy ratio.

15. All along, the policy intention of the MA is that the definition of “residential mortgage” is to refer to the market value of the property at the time when the mortgage loan was approved by an AI, rather than on a regularly marked-to-market basis which would be impracticable for implementation. This is a reasonable and fair interpretation which is in line with market practice. Our legal advice is that the current drafting supports that interpretation. But it would be desirable to make this clear through an amendment to the definition which would make it explicit that the 90% loan-to-value ratio is to be calculated at the time the mortgage was approved by the AI concerned (see clause **17** of the Bill).

Chapter:	155	Title:	BANKING ORDINANCE	Gazette Number:	
Section:	2	Heading:	Interpretation	Version Date:	30/06/1997

- (1) In this Ordinance, unless the context otherwise requires-
- "accounts" (帳目) means any accounts, whether kept in writing or print or by any machine or device;
- "advertisement" (廣告) means any form of advertising, whether notified or published-
- (a) in a newspaper, magazine, journal or other periodical publication;
 - (b) by the display of posters or notices;
 - (c) by means of circulars, brochures, pamphlets or handbills;
 - (d) by an exhibition of photographs or cinematograph films; or
 - (e) by way of sound broadcasting or television,
- and references to the issue of an advertisement shall be construed accordingly;
- "Advisor" (顧問), in relation to an authorized institution, means the person appointed, pursuant to section 52(1)(B), to be the Advisor of the institution; (Added 49 of 1995 s. 2)
- "approval" (核准)-
- (a) in relation to a company proposing to act as a money broker, means the approval of the company under section 118C(1)(a) to act as a money broker;
 - (b) in relation to a money broker, means the certificate of approval held by the broker; (Added 4 of 1997 s. 3)
- "approved currency" (核准貨幣) means a currency-
- (a) freely convertible into Hong Kong dollars; or
 - (b) approved by the Monetary Authority; (Added 64 of 1987 s. 2. Amended 82 of 1992 s. 11)
- "approved money broker" (核准貨幣經紀) means a money broker which holds a valid certificate of approval; (Added 4 of 1997 s. 3)
- "associate" (相聯者), in relation to a person entitled to exercise, or control the exercise of, voting power in relation to, or holding shares in, a company, means any other person in respect of whom that first-mentioned person has an agreement or arrangement, whether oral or in writing, express or implied, with respect to the acquisition, holding or disposal of shares or other interests in that company or under which they act together in exercising their voting power in relation to it; (Added 95 of 1991 s. 2)
- "auditor" (核數師) means a professional accountant holding a practising certificate under the Professional Accountants Ordinance (Cap 50);
- "authorization" (認可) means, as the case requires-
- (a) the authorization under section 16 of a company to carry on banking business, a business of taking deposits as a deposit-taking company or a business of taking deposits as a restricted licence bank, as the case may be;
 - (b) the banking licence, registration or restricted banking licence, as the case may be, held by an authorized institution; (Added 49 of 1995 s. 2)
- "authorized institution" (認可機構) means-
- (a) a bank; (Amended 3 of 1990 s. 2)
 - (b) a restricted licence bank; or (Replaced 3 of 1990 s. 2)
 - (c) a deposit-taking company; (Added 3 of 1990 s. 2)
- "authorized institution incorporated in Hong Kong" (在香港成立為法團的認可機構) means an authorized institution incorporated in Hong Kong by or under the Companies Ordinance (Cap 32) or any other Ordinance and any reference to a bank incorporated in Hong Kong, a deposit-taking company incorporated in Hong Kong or a restricted licence bank incorporated in Hong Kong shall be construed accordingly; (Amended 3 of 1990 s. 2)
- "authorized institution incorporated outside Hong Kong" (在香港以外成立為法團的認可機構)

- means an authorized institution incorporated by or under the law or other authority in any place outside Hong Kong; (Amended 3 of 1990 s. 2; 94 of 1993 s. 2)
- "automated teller machine" (自動櫃員機) means a terminal device, whether installed by a bank or by some other person, which is linked directly or indirectly to a computer system used by a bank and which provides facilities to customers of the bank;
- "bank" (銀行) means a company which holds a valid banking licence; (Amended 43 of 1990 s. 2)
- "Banking Advisory Committee" (銀行業務諮詢委員會) means the Banking Advisory Committee established by section 4;
- "banking business" (銀行業務) means the business of either or both of the following-
- (a) receiving from the general public money on current, deposit, savings or other similar account repayable on demand or within less than the period specified in item 1 of the First Schedule or with a period of call or notice of less than that period; (Amended 4 of 1997 s. 3)
 - (b) paying or collecting cheques drawn by or paid in by customers;
- "banking licence" (銀行牌照) means a banking licence granted under section 16; (Amended 43 of 1990 s. 2)
- "capital adequacy ratio" (資本充足比率) means the capital adequacy ratio referred to in section 98;
- "certificate of approval" (核准證明書) means a certificate of approval attached to a notice under section 118C(1)(a) served on a company; (Added 4 of 1997 s. 3)
- "chief executive" (行政總裁), in relation to an authorized institution, means the chief executive appointed under section 74 in respect of the institution, and includes an alternate chief executive so appointed; (Amended 95 of 1991 s. 2)
- "company" (公司) means a body corporate-
- (a) incorporated under the Companies Ordinance (Cap 32);
 - (b) incorporated by any other Ordinance; or
 - (c) incorporated outside Hong Kong; (Amended 94 of 1993 s. 2)
- "controller" (控權人), in relation to a company-
- (a) means, in respect of all the provisions of this Ordinance, any person who is-
 - (i) an indirect controller; or
 - (ii) a majority shareholder controller; and
 - (b) includes, in respect of the provisions of Part XIII, any person who is a minority shareholder controller,
- of that company, and references in this Ordinance to "control" shall be construed accordingly; (Replaced 95 of 1991 s. 2)
- "currency" (貨幣) includes-
- (a) the European Currency Unit; and
 - (b) any medium of exchange the subject of a declaration under subsection (5)(a) which is in force; (Added 94 of 1993 s. 2)
- "dealing service" (交易服務) means a service, whether or not offered in person or by electronic means or otherwise, whereby the persons to whom the service is provided are given the ability to quote bid or offer prices or rates-
- (a) for the purpose of effecting an agreement of any type referred to in paragraph (a) of the definition of "money broker" (and whether or not any such agreement is effected); and
 - (b) which may be-
 - (i) accepted by any of those other persons to whom they are quoted; or
 - (ii) matched pursuant to the service; (Added 4 of 1997 s. 3)
- "deposit" (存款)-
- (a) means a loan of money-
 - (i) at interest, at no interest or at negative interest; or
 - (ii) repayable at a premium or repayable with any consideration in money or money's

worth; but

- (b) does not include a loan of money-
 - (i) upon terms involving the issue, by any company, of debentures or other securities in respect of which a prospectus has been registered under the Companies Ordinance (Cap 32); (Replaced 64 of 1987 s. 2)
 - (ii) upon terms referable to the provision of property or services; or
 - (iii) by one company to another (neither company being an authorized institution) at a time when one is a subsidiary of the other or both are subsidiaries of another company,

and references in this Ordinance to the taking or the making of a deposit shall be construed accordingly;

"depositor" (存款人) means a person entitled to repayment of a deposit, whether made by him or not;

"Deposit-taking Companies Advisory Committee" (接受存款公司諮詢委員會) means the Deposit-taking Companies Advisory Committee established by section 5;

"deposit-taking company" (接受存款公司) means a company which is currently registered; (Replaced 3 of 1990 s. 2. Amended 49 of 1995 s. 2)

"director" (董事) includes any person who occupies the position of director, whatever the title of his office;

"document" (文件) includes a circular, brochure, pamphlet, poster, handbill, prospectus and any other document which is directed at or likely to be read by members of the public; and also includes any newspaper, magazine, journal or other periodical

publication;

"Exchange Fund" (外匯基金) means the Exchange Fund established under the Exchange Fund Ordinance (Cap. 66); (Added 82 of 1992 s. 11)

"exercise" (行使), in relation to a function, includes perform and discharge; (Added 95 of 1991 s. 2)

"former auditor" (前核數師) means a person who was formerly the auditor of an authorized institution or a former authorized institution; (Added 43 of 1990 s. 2)

"former authorized institution" (前認可機構) means an institution which was formerly a bank, a restricted licence bank or a deposit-taking company; (Added 43 of 1990 s. 2)

"functions" (職能) includes powers and duties;

"holding company" (控股公司) and "subsidiary" (附屬公司) have the same meaning as in the Companies Ordinance (Cap 32);

"incorporated outside Hong Kong" (在香港以外成立為法團) includes established, by whatever means, outside Hong Kong; (Added 94 of 1993 s. 2)

"indirect controller" (間接空權人), in relation to a company, means any person in accordance with whose directions or instructions the directors of the company or of another company of which it is a subsidiary are accustomed to act, but does not include a Manager or Advisor, or any person in accordance with whose directions or instructions those directors are accustomed to act by reason only that they act on advice given by him in his professional capacity; (Added 95 of 1991 s. 2. Amended 49 of 1995 s. 2)

"issue" (發出), in relation to an advertisement, invitation or document, includes publish, circulate, distribute or disseminate the advertisement, invitation or document; and also includes causing the advertisement, invitation or document to be issued; (Amended 95 of 1991 s. 2)

"liquidity ratio" (流動資產比率) means the liquidity ratio referred to in section 102;

"local branch" (本地分行), in relation to-

- (a) an authorized institution which is a bank, means-
 - (i) in the case of a bank incorporated in Hong Kong, a place of business thereof in Hong Kong, other than its principal place of business in Hong Kong, at which it carries on banking business; and

(ii) in the case of a bank incorporated outside Hong Kong, a place of business thereof in Hong Kong, other than its principal place of business in Hong Kong, at which it carries on banking business, but in either case does not mean an automated teller machine; and (Amended 94 of 1993 s. 2)

(b) an authorized institution which is a deposit-taking company or a restricted licence bank, means a place of business in Hong Kong of a deposit-taking company or a restricted licence bank, other than its principal place of business in Hong Kong, at which it carries on the business of taking deposits; (Amended 3 of 1990 s. 2)

"local representative office" (本地代表辦事處) means an office in Hong Kong of a bank within the meaning of section 46(9); (Replaced 94 of 1993 s. 2)

"majority shareholder controller" (大股東控權人), in relation to a company, means any person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, more than 50% of the voting power at any general meeting of the company or of another company of which it is a subsidiary; (Added 95 of 1991 s. 2)

"Manager" (經理人), in relation to an authorized institution, means the person appointed, pursuant to section 52(1)(C), to be the Manager of the institution; (Added 49 of 1995 s. 2)

"manager" (經理), in relation to an authorized institution, means its chief executive and any other person employed by the institution who, under the immediate authority of a director or of the chief executive, exercises managerial functions or is responsible for maintaining accounts or other records of the institution; (Amended 94 of 1993 s. 2)

"minority shareholder controller" (小股東控權人), in relation to a company, means any person who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, 10% or more, but not more than 50%, of the voting power at any general meeting of the company or of another company of which it is a subsidiary; (Added 95 of 1991 s. 2)

"Monetary Authority" (金融管理專員) means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap 66); (Added 82 of 1992 s. 11)

"money at call" (短期通知款項) means money payable within not more than 24 hours of a demand therefor, but does not include money payable on demand;

"money broker" (貨幣經紀)-

(a) subject to paragraph (b), means a person who, for reward (whether by way of commission, fees or otherwise), carries on the business in or from Hong Kong, or provides to persons in Hong Kong the service, of negotiating, arranging or facilitating, whether by electronic means or otherwise, agreements between other persons-

(i) in respect of-

(A) the making of a deposit of any currency;

(B) the purchase or sale of any currency, and whether or not the currency the subject of the purchase or sale is to be received or delivered immediately or at any future time or upon the happening of any future occurrence; or

(C) the purchase or sale of an instrument, or an instrument belonging to a class of instruments, declared in a notice under subsection (14)(a) to be an instrument, or a class of instruments, as the case may be, for the purposes of this definition;

(ii) one of which is an authorized institution; and

(iii) as agent for, or as the provider of a dealing service to, not less than one of those persons;

(b) does not include an authorized institution or-

(i) subject to paragraph (c), a person acting as a money broker where the person is so acting wholly ancillary or incidentally to a business carried on by the person which, if the business is, or were to be, carried on in or from Hong Kong, is not, or would not be, as the case may be, the business of acting as a money broker; or

- (ii) a person, or a person belonging to a class of persons, declared in a notice under subsection (14)(b) not to be a person, or a class of persons, as the case may be, for the purposes of this definition;
 - (c) includes a person, or a person belonging to a class of persons, declared in a notice under subsection (14)(c) to be a person, or a class of persons, as the case may be, to whom paragraph (b)(i) shall not apply; (Added 4 of 1997 s. 3)
- "multi-purpose card" (多用途儲值卡)-
- (a) subject to paragraph (b), means a stored value card other than a single-purpose card;
 - (b) does not include a stored value card, or a stored value card belonging to a class of stored value cards, declared in a notice under subsection (14)(d) not to be a stored value card, or a class of stored value cards, as the case may be, for the purposes of this definition; (Added 4 of 1997 s. 3)
- "overseas branch" (海外分行) means a branch outside Hong Kong of an authorized institution incorporated in Hong Kong, at which it carries on banking business or a business of taking deposits, as the case may be, whether or not the business of the branch is limited by the laws or regulations of the place in which the branch is situated and whether or not the branch is referred to as an agency in such place;
- "overseas representative office" (海外代表辦事處) means an office outside Hong Kong, other than an overseas branch, of an authorized institution incorporated in Hong Kong;
- "register" (紀錄冊) means the register maintained under section 20; (Replaced 49 of 1995 s. 2)
- "registered" (注冊) means registered under section 16; (Replaced 49 of 1995 s. 2)
- "reserves" (儲備), in relation to an authorized institution, means reserves which appear in the accounts of the institution, but does not include any reserves which are represented by the writing down of the value of assets or by provision for the depreciation of fixed assets; (Added 95 of 1991 s. 2)
- "restricted banking licence" (有限制銀行牌照) means a restricted banking licence granted under section 16; (Added 3 of 1990 s. 2. Amended 49 of 1995 s. 2)
- "restricted licence bank" (有限制牌照銀行) means a company which holds a valid restricted banking licence. (Added 3 of 1990 s. 2)
- "share" (股份) means share in the share capital of a company, and includes stock except where a distinction between stock or shares is expressed or implied; and the expression "shareholder" includes a stockholder;
- "short-term deposit" (短期存款) means a deposit with an original term to maturity of less than the period specified in item 1 of the First Schedule or with a period of call or notice of less than such specified period; (Amended 3 of 1990 s. 2)
- "single-purpose card" (單用途儲值卡) means a stored value card referred to in paragraphs (a) and (b)(i) of the definition of "stored value card"; (Added 4 of 1997 s. 3)
- "specified sum" (指明款項), in relation to-
- (a) a deposit-taking company, means the sum referred to in section 14(1)(a); and
 - (b) a restricted licence bank, means the sum referred to in section 14(1)(b); (Amended 3 of 1990 s.2)
- "stored value card" (儲值卡) means a card (or like thing) on which data may be stored (or otherwise recorded) in electronic, magnetic or optical form and for or in relation to which a person pays a sum of money to the issuer of the card, whether directly or indirectly, in exchange for-
- (a) the storage of the value of that money, whether in whole or in part, on the card; and
 - (b) either-
 - (i) an undertaking (whether express or implied) by the issuer that, on the production of the card to the issuer, and whether or not some other action is also required, the issuer will supply goods or services (which shall not include money or money's worth); or
 - (ii) an undertaking (whether express or implied) by the issuer that, on the production of

the card to the issuer or a third party, and whether or not some other action is also required, the issuer or the third party, as the case may be, will supply goods or services (which may include money or money's worth); (Added 4 of 1997 s. 3)

"Unified Exchange" (聯合交易所) has the same meaning as in the Stock Exchanges Unification Ordinance (Cap. 361);

"unsuccessful" (不成功), in relation to an appeal, includes any case where the appeal is abandoned or withdrawn; (Added 49 of 1995 s. 2)

"working day" (工作日) means a day other than a public holiday or a gale warning day within the meaning of section 2 of the Judicial Proceedings (Adjournment During Gale Warning Days) Ordinance (Cap 62). (Added 95 of 1991 s. 2)

(Amended 3 of 1990 s. 2; 43 of 1990 s. 2; 95 of 1991 s. 2; 94 of 1993 s. 2; 49 of 1995 s. 2)

(2) For the purposes of this Ordinance-

- (a) the taking of deposits includes holding out as being prepared to take deposits;
- (b) an advertisement issued by any person by way of display or exhibition in a public place shall be treated as being issued by him on every day on which he causes or authorizes it to be displayed or exhibited;
- (c) an advertisement or document which consists of or contains information likely to lead, directly or indirectly, members of the public to-
 - (i) make deposits; or
 - (ii) enter into, or offer to enter into, agreements to make deposits,shall be treated as being an advertisement or document which is or contains an advertisement to members of the public so to do; and
- (d) an advertisement or document issued by one person on behalf of or to the order of another shall be treated as an advertisement or document, as the case may be, issued by that other person.

(3) Without limiting the generality of any other meaning which "insolvent" (無力償債) may have, an authorized institution shall, for the purposes of this Ordinance, be deemed to be insolvent if it has ceased to pay its debts in the ordinary course of business or it cannot pay its debts as they become due.

(4) Where, under this Ordinance, an authorized institution is required to provide facilities to any person for the purpose of any investigation or examination of the institution, such facilities shall include photocopying facilities.

(5) Where there is any doubt or dispute as to whether a medium of exchange is a currency for the purposes of this Ordinance, the Monetary Authority may, by notice in the Gazette-

- (a) declare that medium of exchange to be a currency for the purposes of this Ordinance;
- (b) declare that medium of exchange not to be a currency for the purposes of this Ordinance. (Added 94 of 1993 s. 2)

(6) Any reference in this Ordinance to any person who signs any document includes a reference to any person who authorizes the signing of the document. (Added 49 of 1995 s. 2)

(7) Any reference in any provision of this Ordinance to a specified form means the form specified under section 133 for the purposes of that provision. (Added 49 of 1995 s. 2)

(8) For the avoidance of doubt, it is hereby declared that any reference in this Ordinance to taking a deposit (or words to the like effect) includes holding a deposit. (Added 49 of 1995 s. 2)

(9) Any reference in this Ordinance to the relevant banking supervisory authority, in relation to a company incorporated outside Hong Kong, means the banking supervisory authority outside Hong Kong which, in the opinion of the Monetary Authority, has primary supervisory responsibility for that company (and whether or not that authority is located in the place where that company is incorporated). (Added 49 of 1995 s. 2)

(10) In sections 18(4), 22(4), 24(5) and 25(3), the term "continuing to hold a deposit" (繼續持有存款) includes renewing a deposit. (Added 49 of 1995 s. 2)

(11) References in this Ordinance to a person ("the facilitator") facilitating the issue of a

multi-purpose card (or words to the like effect) mean facilitating the issue of such a card-

- (a) by another person ("the issuer"); and
- (b) by the provision, whether directly or indirectly or by electronic means or otherwise, by the facilitator to the issuer of valuable consideration the value of which determines, whether in whole or in part, the extent to which the issuer may provide any undertaking referred to in the definition of "stored value card" in respect of such multi-purpose card. (Added 4 of 1997 s. 3)

(12) References in this Ordinance to the affairs, business and property of an authorized institution (including a former authorized institution) shall include, in the case of an institution which has or had approval under section 16(3A)(a) to issue or facilitate the issue of multi-purpose cards, any affairs, business and property of the institution arising from, or attributable to, whether directly or indirectly, that approval. (Added 4 of 1997 s. 3)

(13) Where the Monetary Authority has exercised his power under section 22(1) to propose to revoke the authorization of an authorized institution, or the proposed revocation of the authorization of an authorized institution has taken effect in accordance with section 22(3), then, in the case of an institution which has or had approval under section 16(3A)(a) to issue or facilitate the issue of multi-purpose cards, section 22(4) shall, with all necessary modifications, operate in relation to any sum of money which is-

- (a) referred to in the definition of "stored value card" in the case of a stored value card which is such a multi-purpose card issued by the authorized institution or former authorized institution, as the case may be; or
- (b) paid to the authorized institution or former authorized institution, as the case may be, for facilitating the issue of such a multi-purpose card,

as if any such sum was a deposit referred to in section 22(4) in respect of which the Monetary Authority may exercise his power under section 22(4) (and that power may be exercised accordingly). (Added 4 of 1997 s. 3)

(14) The Monetary Authority may, by notice in the Gazette, and subject to such conditions, if any, as are specified in the notice-

- (a) declare an instrument, or a class of instruments, to be an instrument, or a class of instruments, as the case may be, for the purposes of the definition of "money broker";
- (b) declare a person, or a class of persons, not to be a money broker, or a class of money brokers, as the case may be, for the purposes of the definition of "money broker";
- (c) declare a person, or a class of persons, to be a person, or a class of persons, as the case may be, to whom paragraph (b)(i) of the definition of "money broker" shall not apply;
- (d) declare a stored value card, or a class of stored value cards, not to be a stored value card, or a class of stored value cards, as the case may be, for the purposes of the definition of "multi-purpose card". (Added 4 of 1997 s. 3)

(15) It is hereby declared that-

- (a) any reference to "production" in the definition of "stored value card" includes the use of a stored value card to operate a machine or other device; and for the purpose of-
 - (i) obtaining or paying for, whether directly or indirectly, the supply of goods or services by the issuer or a third party, or any combination thereof; or
 - (ii) the transfer to another person of money or money's worth, whether directly or indirectly;
- (b) where the issuer of a multi-purpose card is or was a bank, then any obligation-
 - (i) on the issuer to redeem or refund, or otherwise give value for, any value which is or was stored on that card; and
 - (ii) which is recorded, or which is required to be recorded, as a liability on the balance sheet of the issuer,shall be deemed to be a deposit for the purposes of section 265(1)(db) of the Companies Ordinance (Cap 32);
- (c) any reference in this Ordinance to a person acting as a money broker (or words to the like

effect) includes a person holding himself out to be a money broker;

(d) a notice under subsection (14) is subsidiary legislation. (Added 4 of 1997 s. 3)

(16) Any reference in this Ordinance to a continuing offence means an offence consisting of a person's continued default, refusal or other contravention of a requirement (howsoever described) of this Ordinance, and notwithstanding that the period specified by or under this Ordinance for complying with that requirement has expired. (Added 4 of 1997 s. 3)

Chapter: 155	Title: BANKING ORDINANCE	Gazette Number:
Section: 49	Heading: Control of establishment, etc. of overseas branches and overseas representative offices	Version Date: 30/06/1997

PART IX

OVERSEAS BRANCHES, OVERSEAS REPRESENTATIVE OFFICES, FEES AND OVERSEAS BANKING CORPORATIONS

(Amended 94 of 1993 s. 14)

(1) Without prejudice to section 44, an authorized institution which is incorporated in Hong Kong shall be subject to a condition that the institution shall not establish or maintain any overseas branch or overseas representative office thereof without the approval of the Monetary Authority.

(2) Subsection (1) applies to every authorized institution incorporated in Hong Kong whether the institution was authorized before, on or after the commencement of this Ordinance, and subsections (4) and (5) apply to an approval granted under subsection (1) whether the approval was granted before, on or after such commencement. (Amended 49 of 1995 s. 10)

(3) Approval under subsection (1) shall be deemed to have been granted in respect of any overseas branch or overseas representative office lawfully established prior to the commencement of this Ordinance.

(4) The Monetary Authority may at any time, by notice in writing served upon an authorized institution, attach to an approval granted under subsection (1), or deemed to have been granted under subsection (3), in respect of any overseas branch or overseas representative office thereof such conditions, or amend or cancel any conditions so attached, as he may think proper.

(5) The Monetary Authority may at any time revoke, in such case as he thinks fit, an approval granted under subsection (1), or deemed to have been granted under subsection (3), in respect of any overseas branch or overseas representative office.

(6) Where the Monetary Authority refuses to grant approval under subsection (1) or revokes an approval under subsection (5), he shall notify the authorized institution concerned in writing of the refusal or revocation.

(7) (Repealed 4 of 1997 s. 27)

(8) Every director and every manager of an authorized institution which contravenes the condition in subsection (1) or any condition attached under subsection (4) 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. (Amended 4 of 1997 s. 27)

(Amended 82 of 1992 s. 25)

Chapter: 155	Title: BANKING ORDINANCE	Gazette Number:
Section: 50	Heading: Conditions regarding overseas branches and overseas representative offices	Version Date: 30/06/1997

(1) Every authorized institution incorporated in Hong Kong which maintains an overseas branch thereof shall be subject to a condition that-

- (a) the institution shall submit to the Monetary Authority a return in such form, and at such intervals, as he may specify showing the assets and liabilities of the overseas branch;
- (b) the institution shall submit to the Monetary Authority such further information as he may consider necessary for the proper understanding of the functions and activities of the overseas branch, and that such information shall be submitted within such period and in such manner as the Monetary Authority may require;
- (c) if the Monetary Authority requires any return submitted to him pursuant to paragraph (a), or any information submitted to him pursuant to a requirement under paragraph (b), to be accompanied by a report prepared by, subject to subsection (2A), an auditor or auditors appointed by the institution, the institution shall submit a report as to whether or not, in the opinion of the auditor or auditors, the return or information is correctly compiled, in all material respects, from the books and records of the overseas branch; (Amended 67 of 1992 s. 2;)
- (d) if the Monetary Authority wishes to examine the books, accounts and transactions of the overseas branch, the institution shall for that purpose afford the person carrying out the examination at the place where the branch is maintained access to the books and accounts of the branch, to documents of title to the assets and other documents and to all securities held by the branch in respect of its customers' transactions and its cash and to such information and facilities as may be required to conduct the examination, and that the institution shall produce to the person carrying out the examination such books, accounts, documents, securities, cash or other information as he may require: Provided that, so far as is consistent with the conduct of the examination, such books, accounts, documents, securities and cash shall not be required to be produced at such times and such places as shall interfere with the proper conduct of the normal daily business of the overseas branch. (Amended 82 of 1992 s. 25)

(2) Every authorized institution incorporated in Hong Kong which maintains an overseas representative office thereof shall be subject to a condition that-

- (a) the institution shall submit to the Monetary Authority such information as he may require regarding the functions and activities of the overseas representative office;
- (b) if the Monetary Authority wishes to examine the functions and activities of the overseas representative office, the institution shall for that purpose afford the person carrying out the examination at the place where the representative office is maintained access to the documents maintained by the representative office and to such information and facilities as may be required to conduct the examination, and that the institution shall produce to the person carrying out the examination such documents or other information as he may require. (Amended 82 of 1992 s. 25)

(2A) The auditor or auditors appointed by an authorized institution to prepare a report required under subsection (1)(c) shall be-

- (a) an auditor or auditors appointed by the institution prior to the report being so required and approved by the Monetary Authority for the purpose of preparing the report;
- (b) an auditor approved, or an auditor from amongst auditors nominated, by the Monetary Authority for the purpose of preparing the report after consultation with the institution; or
- (c) an auditor referred to in paragraph (a) and an auditor referred to in paragraph (b), as may be required by the Monetary Authority. (Added 67 of 1992 s. 2. Amended 82 of 1992 s. 25)

(3) This section applies to every authorized institution incorporated in Hong Kong whether the

institution was authorized before, on or after the commencement of this Ordinance. (Amended 49 of 1995 s. 11)

(4) Every director and every manager of an authorized institution which contravenes any condition in subsection (1) or (2), or fails to comply with any requirement under those subsections, commits an offence and is liable-

(a) on conviction upon indictment to a fine at tier 7 and to imprisonment for 12 months; or

(b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months, and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues. (Amended 4 of 1997 s. 27)

(5) If an authorized institution produces any book, account, document, security or information whatsoever under this section which is false in a material particular, every director and every manager of the institution commits an offence and is liable-

(a) on conviction upon indictment to a fine at tier 8 and to imprisonment for 2 years; or (Amended 4 of 1997 s. 27)

(b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months. (Amended 4 of 1997 s. 27)

(6) Any person who signs any document for the purposes of this section which he knows or reasonably ought to know to be false in a material particular commits an offence and is liable-

(a) on conviction upon indictment to a fine at tier 8 and to imprisonment for 2 years; or (Amended 4 of 1997 s. 27)

(b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months. (Amended 4 of 1997 s. 27)

Chapter:	155	Title:	BANKING ORDINANCE	Gazette Number:	
Section:	51	Heading:	Fees in respect of overseas branches and overseas representative offices	Version Date:	30/06/1997

(1) Whenever the establishment by an authorized institution incorporated in Hong Kong of an overseas branch or overseas representative office is approved under section 49(1), the institution shall pay to the Director of Accounting Services the fee specified in the Second Schedule in relation to that branch or representative office and thereafter, so long as the branch or representative office continues to be maintained by the institution, it shall pay to the Director of Accounting Services the fee specified in the Second Schedule on the anniversary in each year of the date on which the institution was authorized.

(2) An authorized institution incorporated in Hong Kong that is maintaining, at the commencement of this Ordinance, an overseas branch or overseas representative office to which section 49(3) applies shall, so long as the branch or representative office continues to be maintained by the institution, pay to the Director of Accounting Services the fee specified in the Second Schedule on the anniversary in each year of the date on which the institution was authorized.

(Amended 49 of 1995 s. 12)

Chapter:	155	Title:	BANKING ORDINANCE	Gazette Number:	
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- (1) In this section-
"overseas banking corporation" (海外銀行法團) means a company which-
- (a) is incorporated outside Hong Kong (and whether or not it is an authorized institution); and
 - (b) may, whether or not in or outside Hong Kong, lawfully take deposits from the general public, whether or not on current account;
- "relevant day" (有關日期) means the day of *commencement of the Banking (Amendment) Ordinance 1993 (94 of 1993).
- (2) An authorized institution incorporated in Hong Kong, and any holding company incorporated in Hong Kong of such an institution, shall each be subject to a condition that it shall not-
- (a) establish or acquire, by whatever means, an overseas banking corporation such that that corporation becomes the subsidiary of the institution or of the holding company, as the case may be, without the approval of the Monetary Authority;
 - (b) if any such approval granted in respect of that corporation is revoked under subsection (5), maintain that corporation as a subsidiary on or after the time such revocation comes into effect.
- (3) Approval under subsection (2) shall be deemed to have been granted in respect of any overseas banking corporation-
- (a) which was, immediately before the relevant day, the subsidiary of an authorized institution or of any holding company of the institution; or
 - (b) which becomes, not later than 3 months after the relevant day, the subsidiary of an authorized institution or of any holding company of the institution where the acts or circumstances by virtue of which such corporation became such a subsidiary substantially occurred before the relevant day.
- (4) The Monetary Authority may at any time, by notice in writing served upon an authorized institution or its holding company, attach to an approval granted under subsection (2), or deemed to have been granted under subsection (3), in respect of any overseas banking corporation which is to become or is a subsidiary of the institution or of the holding company, as the case may be, such conditions, or amend or cancel any conditions so attached, as he may think proper.
- (5) The Monetary Authority may revoke-
- (a) in such case as he thinks fit; and
 - (b) with effect from such time as is specified by him, being a time reasonable in all the circumstances of such case,
- an approval granted under subsection (2), or deemed to have been granted under subsection (3), in respect of any overseas banking corporation.
- (6) Where the Monetary Authority refuses to grant approval under subsection (2) or revokes an approval under subsection (5), he shall notify the authorized institution or its holding company concerned in writing of the refusal or revocation.
- (7) (Repealed 4 of 1997 s. 27)
- (8) Every director and every manager of an authorized institution or of its holding company which contravenes the condition in subsection (2) or any condition attached under subsection (4) 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. (Amended 4 of 1997 s. 27)

(Added 94 of 1993 s. 15)

*Commencement date: 31 December 1993.

Chapter: 155	Title: BANKING ORDINANCE	Gazette Number: 25 of 1998 s. 2
Section: 52	Heading: Powers of Monetary Authority	Version Date: 01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

PART X

POWERS OF CONTROL OVER AUTHORIZED INSTITUTIONS

- (1) Where-
- (a) an authorized institution informs the Monetary Authority-
 - (i) that it is likely to become unable to meet its obligations; or
 - (ii) that it is insolvent or about to suspend payment;
 - (b) an authorized institution becomes unable to meet its obligations or suspends payment;
 - (c) the Monetary Authority is of the opinion that-
 - (i) an authorized institution is carrying on its business in a manner detrimental to the interests of-
 - (A) its depositors or potential depositors;
 - (B) its creditors; or
 - (C) holders or potential holders of multi-purpose cards issued by it or the issue of which is facilitated by it;
 - (ii) an authorized institution is insolvent or is likely to become unable to meet its obligations or is about to suspend payment;
 - (iii) an authorized institution has contravened or failed to comply with any of the provisions of this Ordinance;
 - (iv) an authorized institution has contravened or failed to comply with any condition attached under section 16 to its authorization or approval, the condition specified in section 49(1), the condition specified in section 50(1), the condition specified in section 50(2) or the condition specified in section 51A(2); or
 - (v) his power under section 22(1) to propose to revoke the authorization of an authorized institution is exercisable (and whether or not section 23(1) has been complied with); or (Replaced 4 of 1997 s. 10)
 - (d) the Financial Secretary advises the Monetary Authority that he considers it in the public interest to do so,
- the Monetary Authority, after consultation with the Financial Secretary, may exercise such one or more of the following powers as may from time to time appear to him to be necessary-
- (A) to require the institution, by notice in writing served on it, forthwith to take any action or to do any act or thing whatsoever in relation to its affairs, business and property as he may consider necessary (including any requirement imposing restrictions on the banking business, business of taking deposits as a deposit-taking company or business of taking deposits as a restricted licence bank, or business of issuing or facilitating the issue of multi-purpose cards as the case may be, which may be carried on by the institution); (Replaced 49 of 1995 s. 13. Amended 4 of 1997 s. 10)

- (B) subject to subsection (3E), to give a direction that, during the period for which the direction is in force, the institution shall seek advice on the management of its affairs, business and property from an Advisor, for which purpose the Monetary Authority shall appoint a person to be the Advisor of that institution; (Replaced 49 of 1995 s. 13)
 - (C) subject to subsections (3D) and (3E), to give a direction that, during the period for which the direction is in force, such of the affairs, business and property of the institution as are specified in the direction shall be managed by a Manager, for which purpose the Monetary Authority shall-
 - (I) appoint a person to be the Manager of that institution; and
 - (II) specify in the direction the primary objective or objectives (not inconsistent with the provisions of this Ordinance) with which the Manager shall comply; (Replaced 49 of 1995 s. 13)
 - (D) to report the circumstances to the Governor in Council.
- (2) Except in the circumstances specified in subsection (1)(a), the Monetary Authority shall not exercise the power conferred by subsection (1)(D) unless he has-
- (a) where the authorized institution is incorporated in Hong Kong and a direction given under subsection (1)(C) is in force in respect of the institution-
 - (i) given to the institution, and such relevant persons, if any, as he thinks fit, not less than 7 days' notice in writing (or such lesser period as is permitted under subsection (2A)) stating-
 - (A) his intention to exercise such power; and
 - (B) his reasons for the exercise thereof; and
 - (ii) afforded the institution, and such relevant persons, if any, as he thinks fit, an opportunity to submit to him representations in writing thereon (which representations, if any, shall form part of his report to the Governor in Council); (Replaced 49 of 1995 s. 13)
 - (b) where the authorized institution is incorporated outside Hong Kong and a direction given under subsection (1)(C) is in force in respect of the institution-
 - (i) given to the institution, at its principal place of business outside Hong Kong, not less than 7 days' notice in writing (or such lesser period as is permitted under subsection (2A)) stating-
 - (A) his intention to exercise such power; and
 - (B) his reasons for the exercise thereof; and
 - (ii) afforded the institution an opportunity to submit to him representations in writing thereon (which representations, if any, shall form part of his report to the Governor in Council); (Replaced 49 of 1995 s. 13)
 - (c) in any other case-
 - (i) given to the authorized institution not less than 7 days' notice in writing (or such lesser period as is permitted under subsection (2A)) stating-
 - (A) his intention to exercise such power; and
 - (B) his reasons for the exercise thereof; and
 - (ii) afforded the institution an opportunity to submit to him representations in writing thereon (which representations, if any, shall form part of his report to the Governor in Council). (Added 49 of 1995 s. 13)
- (2A) The Monetary Authority may give an authorized institution and any relevant person less than the 7 days' notice in writing referred to in subsection (2) where- (Amended 49 of 1995 s. 13)
- (a) he has the consent of the Financial Secretary to do so; and
 - (b) to do so is reasonable in the circumstances. (Added 67 of 1992 s. 3)
- (3) (Repealed 49 of 1995 s. 13)
- (3A) Subject to subsection (3D), the Monetary Authority may from time to time vary a direction given under subsection (1)(C) in respect of-
- (a) the affairs, business and property specified in the direction of the authorized institution to

which the direction relates;

- (b) the primary objective or objectives specified in the direction with which the Manager of the institution shall comply. (Added 49 of 1995 s. 13)

(3B) It is hereby declared that any thing done, in reliance on a direction given under subsection (1)(C), at any time before a variation under subsection (3A) of that direction shall not be invalid by reason only of that variation. (Added 49 of 1995 s. 13)

(3C) During the period for which a direction given under subsection (1)(C) is in force in respect of an authorized institution, any reference in this Part to-

- (a) the affairs, business or property, or any combination thereof, of the institution; or
- (b) the primary objective or objectives with which the Manager of the institution shall comply,

shall, unless the context otherwise requires, be construed to mean-

- (i) where paragraph (a) is applicable, such affairs, business or property, or combination thereof, as the case may be;
- (ii) where paragraph (b) is applicable, such primary objective or objectives,

specified in that direction as varied from time to time under subsection (3A). (Added 49 of 1995 s. 13)

(3D) Notwithstanding any other provision of this Part, no direction given under subsection (1)(C) (including any variation thereof under subsection (3A)) in respect of an authorized institution incorporated outside Hong Kong shall apply to any of the affairs, business or property of the institution except-

- (a) so much of the affairs and business of the institution as are carried on, or managed, in or from Hong Kong; and
- (b) so much of the property of the institution as is either or both of the following-
 - (i) located in, or managed from, Hong Kong;
 - (ii) an asset of the institution's principal place of business in Hong Kong or of any local branch. (Added 49 of 1995 s. 13)

(3E) The Monetary Authority shall not give a direction under subsection (1)(B) or (C) in respect of an authorized institution in relation to which the Court of First Instance has made an order for the winding-up of the institution. (Added 49 of 1995 s. 13. Amended 25 of 1998 s. 2)

(3F) It is hereby declared that the Monetary Authority may exercise his power under subsection (1)(B) or (C) in such a way as to appoint-

- (a) a company or partnership; or
- (b) without prejudice to the generality of paragraph (a), 2 or more persons, to be the Advisor or Manager, as the case may be, of an authorized institution. (Added 49 of 1995 s. 13)

(3G) Where the Monetary Authority exercises his power under subsection (1)(C) in such a way as to appoint 2 or more persons to be the Manager of an authorized institution, he shall-

- (a) by notice in writing, specify which of the duties and powers imposed or conferred on a Manager under this Ordinance shall be discharged or exercised, as the case may be, in relation to the institution, by-
 - (i) any such person alone;
 - (ii) any such persons jointly;
 - (iii) each such person; and
- (b) attach that notice to the direction concerned given under that subsection served on the institution under section 53A(1),

and the provisions of this Ordinance (including section 53G) shall be read and have effect with such modifications as are necessary to take into account that notice. (Added 49 of 1995 s. 13)

(3H) For the avoidance of doubt, it is hereby declared that a person appointed under subsection (1)(B) or (C) to be the Advisor or Manager of an authorized institution may be a person who holds an appointment under section 5A(3) of the Exchange Fund Ordinance (Cap 66). (Added 49 of 1995 s. 13)

(3I) (Repealed 4 of 1997 s. 27)

(4) Every director and every manager of an authorized institution which fails to comply with any requirement of the Monetary Authority under subsection (1)(A) commits an offence and is liable-

- (a) on conviction upon indictment to a fine at tier 9 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at tier 5 for every day during which the offence continues; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues. (Amended 4 of 1997 s. 27)

(5) In this section, "relevant person" (有關人士), in relation to an authorized institution, means any person who-

- (a) is the Manager of the institution;
- (b) is a minority shareholder controller, majority shareholder controller or indirect controller of the institution;
- (c) has ceased to be a chief executive or director of the institution by virtue of section 53B(1)(a);
- (d) is a chief executive or director of the institution by virtue of the operation of section 53B(2). (Added 49 of 1995 s. 13)

(Amended 82 of 1992 s. 25)

Chapter: 155	Title: BANKING ORDINANCE	Gazette Number:
Section: 59	Heading: Audit	Version Date: 30/06/1997

PART XI

AUDITS AND MEETINGS

(1) Every authorized institution, and its auditors, shall comply with the Companies Ordinance (Cap 32) with respect to the audit of a company's accounts, whether or not the institution is incorporated under that Ordinance.

(2) The Monetary Authority may, after consultation with an authorized institution, by notice in writing to the institution require the institution to submit to him a report-

- (a) subject to subsection (3), prepared by an auditor or auditors appointed by the institution;
- (b) on such matters as the Monetary Authority may reasonably require for the exercise of his functions under this Ordinance including, but without limiting the generality of such matters, such a report-
 - (i) on the state of affairs or profit and loss, or both, of the institution based on an audit of the institution's accounts carried out in respect of the period specified in the notice requiring such a report; or
 - (ii) on whether or not the institution has in place systems of control which are adequate to enable, as much as is practicable, the affairs, business and property of the institution to be prudently managed and the institution to comply with its duties under this Ordinance; and (Amended 49 of 1995 s. 17)
- (c) within such period and prepared in such manner as the Monetary Authority may reasonably require. (Replaced 67 of 1992 s. 4. Amended 82 of 1992 s. 25)

(3) The auditor or auditors appointed by an authorized institution to prepare a report required under subsection (2) shall be-

- (a) an auditor or auditors appointed by the institution prior to the report being so required and approved by the Monetary Authority for the purpose of preparing the report;
- (b) an auditor approved, or an auditor from amongst auditors nominated, by the Monetary Authority for the purpose of preparing the report after consultation with the institution; or
- (c) an auditor referred to in paragraph (a) and an auditor referred to in paragraph (b),

as may be required by the Monetary Authority. (Replaced 67 of 1992 s. 4. Amended 82 of 1992 s. 25)

(4) Section 60(1) shall not apply to anything done for the purposes of subsection (2)(b)(i) unless otherwise specified by the Monetary Authority by notice in writing to the authorized institution concerned. (Replaced 67 of 1992 s. 4. Amended 82 of 1992 s. 25; 49 of 1995 s. 17)

(5) Every director and every manager of an authorized institution which contravenes subsection (1) or (2) commits an offence and is liable-

- (a) on conviction upon indictment to a fine at tier 7 and to imprisonment for 2 years and, in the case of a continuing offence under subsection (2), to a further fine at tier 3 for every day during which the offence continues; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months and, in the

case of a continuing offence under subsection (2), to a further fine at tier 2 for every day during which the offence continues. (Amended 67 of 1992 s. 4; 4 of 1997 s. 27)

- (6) In this section-
"adequate" (足夠), in relation to systems of control, includes operating effectively;
"systems of control" (管控制度) includes procedures. (Added 67 of 1992 s. 4)
(Amended 43 of 1990 s. 3)

Chapter:	155	Title:	BANKING ORDINANCE	Gazette Number:	
Section:	60	Heading:	Publication of audited balance sheet, etc.	Version Date:	30/06/1997

- (1) Every authorized institution incorporated in Hong Kong shall, not later than 4 months after the close of each financial year, or within such further period as the Monetary Authority approves in writing, publish, in accordance with Part 1 of the Tenth Schedule, a notice-
- (a) relating to the institution's audited annual accounts for that year;
 - (b) complying with the requirements of Part 2 of that Schedule; and
 - (c) in the specified form, if any.
- (2) An authorized institution shall-
- (a) lodge with the Monetary Authority a copy of each notice it is required under subsection (1) to publish; and
 - (b) so lodge such copy not later than 7 days before the publication of the notice of which it is a copy.
- (3) Where an authorized institution has complied with subsection (1) in respect of a financial year, it shall, as soon as is practicable thereafter exhibit-
- (a) a copy of its audited annual accounts for that year;
 - (b) a copy of the report of the auditors made pursuant to section 141 of the Companies Ordinance (Cap 32);
 - (c) a copy of the report of the directors laid or to be laid before the company in general meeting in accordance with section 129D(1) of that Ordinance;
 - (d) the full and correct names of all persons who are directors or managers for the time being of the institution; and
 - (e) the names of all subsidiaries, for the time being, of the institution,
- in a conspicuous position in the principal place of business of the institution in Hong Kong and in each local branch and, in the case of each of the documents, until the next time a document of the same kind is so exhibited in compliance with this subsection.
- (4) A copy of each of the documents referred to in subsection (3) shall be lodged with the Monetary Authority by an authorized institution, prior to first exhibition thereof under that subsection, with a list of the names of all companies of which, for the time being, its directors are also directors.
- (5) Every authorized institution incorporated outside Hong Kong shall, not later than 6 months after the close of each financial year, or within such further period as the Monetary Authority approves in writing, lodge with the Monetary Authority-
- (a) a copy of its audited annual balance sheet (including any notes thereon), and a copy of the profit and loss account for that year;
 - (b) a copy of the report of the auditor, or any person exercising a similar function in accordance with the law of the place in which the institution is incorporated, upon that annual balance sheet (including any notes thereon) and profit and loss account; and
 - (c) a copy of the report of the directors with respect to the profit or loss of the institution for

that year and the state of the institution's affairs as at the end thereof where the law of the place in which the institution is incorporated requires such a report.

(6) The Monetary Authority may by notice in writing exempt an authorized institution which has complied with subsection (5) from section 59(1) subject to such conditions as he may think proper to attach thereto.

(7) Where an authorized institution has complied with subsection (5) in respect of a financial year, it shall, unless otherwise permitted by the Monetary Authority, as soon as practicable thereafter exhibit a copy of each document lodged with the Monetary Authority under that subsection-

- (a) in a conspicuous position in the principal place of business of the institution in Hong Kong and in each local branch; and
- (b) in the case of any such document, until the next time a document of the same kind is so exhibited in compliance with this subsection.

(8) The Monetary Authority may require any authorized institution to submit such further information as he may think necessary for the proper understanding of any document it has under subsection (2), (4) or (5) lodged with the Monetary Authority; and such information shall be submitted within such period and in such manner as the Monetary Authority may require.

(9) Every director and every manager of an authorized institution which contravenes subsection (1), (2), (3), (4), (5) or (7) 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. (Amended 4 of 1997 s. 27)

(10) Every director and every manager of an authorized institution which fails without reasonable excuse to comply with any requirement under subsection (8) commits an offence and is liable on conviction upon indictment or on summary conviction to a fine at tier 5 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues. (Amended 4 of 1997 s. 27)

(11) In this section and the Tenth Schedule, "audited annual accounts" (經審計的周年帳目), in relation to an authorized institution-

- (a) means the institution's balance sheet and profit and loss account, together with any notes thereon, which are subject to a report by the institution's auditor pursuant to section 141 of the Companies Ordinance (Cap 32); and
- (b) includes the institution's cash flow statement, together with any notes thereon, if that auditor expresses an opinion on the institution's cash flow in that report.

(Replaced 49 of 1995 s. 19)

Chapter:	155	Title:	BANKING ORDINANCE	Gazette Number:	
Section:	70	Heading:	Provisions applicable to persons proposing to become controllers of authorized institutions incorporated in Hong Kong	Version Date:	30/06/1997

(1) This section shall apply to a person becoming or being-

- (a) a majority shareholder controller; or
- (b) an indirect controller,

of an authorized institution incorporated in Hong Kong as it applies to a person becoming or being, as the

case may be, a minority shareholder controller of an authorized institution incorporated in Hong Kong.

(2) In this section-

"conditional notice of consent" (有條件同意通知書) means a notice of consent referred to in paragraph (b) of the definition of "notice of consent";

"notice of consent" (同意通知書) means a notice in writing specifying that-

- (a) there is no objection to the person specified in that notice becoming or being, as the case may be, a minority shareholder controller of the authorized institution specified in that notice; or
- (b) the conditions subject to which there is no objection to the person specified in that notice becoming or being, as the case may be, a minority shareholder controller of the authorized institution specified in that notice;

"notice of objection" (反對通知書) means a notice in writing objecting to the person specified in that notice becoming or being, as the case may be, a minority shareholder controller of the authorized institution specified in that notice.

(3) Subject to subsection (4), no person shall become a minority shareholder controller of an authorized institution incorporated in Hong Kong unless-

- (a) he has served on the Monetary Authority a notice in writing stating that he proposes to become such a controller; and
- (b) either-
 - (i) subject to subsection (17), the Monetary Authority has, before the expiration of 3 months from the date of service of that notice, served on him a notice of consent; or
 - (ii) that period has expired without the Monetary Authority having served on him a notice of objection.

(4) A notice referred to in subsection (3)(a) served on the Monetary Authority by a person shall not be regarded as compliance with that subsection except as respects that person becoming a minority shareholder controller of the authorized institution to which the notice relates before the expiration of 12 months from-

- (a) where that person has been served with a notice of consent, on the date on which he was so served;
- (b) where the period referred to in subsection (3)(b) has expired and neither of the events specified in that section has occurred, on the expiration of that period;
- (c) where that person has been served with a notice of objection in respect of which an appeal under section 132A(3) has been successful, on the date on which the appeal was successful. (Amended 4 of 1997 s. 27)

(5) Where a person-

- (a) becomes a minority shareholder controller of an authorized institution in contravention of subsection (3);
- (b) did not know that the acts or circumstances by virtue of which he became such a controller were such as to have that effect; and
- (c) subsequently becomes aware of the fact that he has become such a controller,

he shall serve on the Monetary Authority, not later than 14 days after becoming aware of that fact, a notice in writing stating that he has become such a controller.

(6) Subject to subsections (7), (8), (9) and (10), the Monetary Authority may serve-

- (a) a notice of consent; or
- (b) a notice of objection,

on a person.

(7) Without limiting the generality of conditions which the Monetary Authority may specify in a conditional notice of consent, he may specify in the notice such conditions as he may think proper to safeguard the interests of depositors and potential depositors of the authorized institution specified in the notice.

(8) The Monetary Authority shall not serve a notice of objection on a person where the Monetary Authority is satisfied-

- (a) that the person is a fit and proper person to become or to be, as the case may be, a minority shareholder controller of the authorized institution specified in the notice;
- (b) that the interests of depositors and potential depositors of that institution would not be or are not, as the case may be, in some other manner threatened by that person becoming or being, as the case may be, such a controller; and
- (c) where that person-
 - (i) is not presently such a controller, that, having regard to that person's likely influence on that institution if he was to become such a controller-
 - (A) if the Monetary Authority is of the opinion that that institution is presently conducting its business prudently, the institution is likely to continue so conducting its business;
 - (B) if the Monetary Authority is of any other opinion, that person is likely to undertake adequate remedial action;
 - (ii) is presently such a controller, that, having regard to that person's influence on that institution as such a controller-
 - (A) if the Monetary Authority is of the opinion that that institution was conducting its business prudently before that person became such a controller, the institution is presently, and is likely to continue, so conducting its business;
 - (B) if the Monetary Authority is of any other opinion, that person is presently undertaking, or is likely to undertake, adequate remedial action.

(9) The Monetary Authority shall not serve a conditional notice of consent or notice of objection on a person who has become a minority shareholder controller of an authorized institution-

- (a) unless he has become such a controller in contravention of subsection (3);
- (b) subject to subsection (17), after the expiration of 3 months immediately following the Monetary Authority becoming aware of such contravention.

(10) The Monetary Authority shall, before serving a conditional notice of consent or notice of objection on a person, serve on that person a preliminary notice in writing-

- (a) stating that the Monetary Authority is considering the service on him of a conditional notice of consent or notice of objection, as the case may be;
- (b) where the Monetary Authority is considering the service on him of-
 - (i) a conditional notice of consent, specifying the conditions which the Monetary Authority proposes to specify in the notice;
 - (ii) a notice of objection, specifying which of the matters referred to in subsection (8) in respect of which the Monetary Authority is not satisfied; and
- (c) stating that he may, within 1 month from the date of service of the preliminary notice, make written representations to the Monetary Authority.

(11) Where representations are made in accordance with subsection (10)(c), the Monetary Authority shall take them into account in deciding whether to serve the conditional notice of consent or notice of objection, as the case may be, concerned.

(12) A conditional notice of consent served on a person-

- (a) may specify conditions which were not specified in the preliminary notice served under subsection (10) on that person where-
 - (i) that person consents to those conditions; or
 - (ii) a subsequent preliminary notice specifying those conditions has been served under that subsection on that person; and
- (b) shall give particulars of the right conferred by subsection (15).

(13) A notice of objection served on a person-

- (a) shall, subject to paragraph (b), specify which of the matters referred to in subsection (8) in respect of which the Monetary Authority is not satisfied;
- (b) shall not specify any such matters which were not specified in the preliminary notice served under subsection (10) on that person; and
- (c) shall give particulars of the right conferred by subsection (15).

(14) The Monetary Authority shall not be obliged to disclose to a person any particulars of the matters referred to in subsection (8) on which he is considering the service on him or has served on him, as the case may be, a notice of objection.

(15) (Repealed 4 of 1997 s. 27)

(16) Where the Monetary Authority pursuant to section 72A requires a person who has given a notice in writing under subsection (3)(a) or (5) to submit information, the time between imposing that requirement and the receipt of the information shall be added to the period referred to in subsection (3)(b) or (9)(b), as the case may be.

(17) The period referred to in subsection (3)(b) or (9)(b) (together with any extension under subsection (16)) shall not expire, if it would otherwise do so, until 14 days after the expiration of the period within which representations can be made in accordance with subsection (10)(c).

(18) Subject to subsection (19), any person who contravenes subsection (3) commits an offence and is liable-

- (a) on conviction upon indictment to a fine at tier 8 and to imprisonment for 5 years; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months. (Amended 4 of 1997 s. 27)

(19) Where a person is charged with an offence under subsection (18), it shall be a defence to prove that he did not know that the acts or circumstances by virtue of which he became a minority shareholder controller of the authorized institution concerned were such as to have that effect.

(20) Any person who contravenes subsection (5) commits an offence and is liable-

- (a) on conviction upon indictment to a fine at tier 7 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months,

and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues. (Amended 4 of 1997 s. 27)

(21) Any person who contravenes any condition specified in a conditional notice of consent served on him commits an offence and is liable-

- (a) on conviction upon indictment to a fine at tier 7 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months,

and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues. (Amended 4 of 1997 s. 27)

(Replaced 95 of 1991 s. 18. Amended 82 of 1992 s. 25)

Chapter:	155	Title:	BANKING ORDINANCE	Gazette Number:	
Section:	73	Heading:	Certain persons prohibited from acting as employees of authorized institutions except with consent of Monetary Authority	Version Date:	30/06/1997

- (1) No person who-
- (a) is bankrupt or has entered into a composition with his creditors;
 - (b) has been convicted in any place of an offence involving fraud or dishonesty; or
 - (c) knows, or ought reasonably to know, that, in respect of an authorized institution of which he is or was a director or is or was concerned in the management thereof-
 - (i) the institution is being, or has been, wound up or otherwise dissolved; or
 - (ii) its licence or registration, as the case may be, has been revoked, (Replaced 94 of 1993 s. 22)

shall, without the consent in writing of the Monetary Authority, become an employee of an authorized institution (or, where paragraph (c) is applicable, of another authorized institution) or, if becoming such an employee without such consent, act, or continue to act, as such employee. (Amended 82 of 1992 s. 25; 94 of 1993 s. 22)

(1A) No person who on or after becoming an employee of an authorized institution (and whether or not he became such an employee before, on or after the relevant day)-

- (a) becomes bankrupt, or enters into a composition with his creditors, on or after the relevant day;
- (b) is convicted, on or after the relevant day, in any place of an offence involving fraud or dishonesty; or
- (c) knows, or ought reasonably to know, that, in respect of another authorized institution of which he is or was a director or is or was concerned in the management thereof-
 - (i) the institution is being, or has been, wound up or otherwise dissolved on or after the relevant day; or
 - (ii) its licence or registration, as the case may be, has been revoked on or after the relevant day,

shall-

- (i) in the case of paragraph (a) or (b), continue to act as such employee without the consent in writing of the Monetary Authority;
- (ii) in the case of paragraph (c), continue to act as such employee either-
 - (A) unless he has notified the Monetary Authority of that prior employment together with a request that the Monetary Authority grant consent to him to continue to act as such employee; or
 - (B) if the Monetary Authority refuses to grant such consent. (Added 94 of 1993 s. 22)

(1B) Where the Monetary Authority refuses to grant consent under subsection (1) or (1A) he shall notify the person concerned in writing of his refusal as soon as practicable. (Added 94 of 1993 s. 22)

(1C) (Repealed 4 of 1997 s. 27)

(2) Any person who contravenes subsection (1) or (1A) commits an offence and is liable-(Amended 94 of 1993 s. 22)

- (a) on conviction upon indictment to a fine at tier 6 and to imprisonment for 12 months; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months. (Amended 4 of 1997 s. 27)

(3) In this section, "relevant day" (有關日期) means the day of * commencement of the Banking (Amendment) Ordinance 1993 (94 of 1993). (Added 94 of 1993 s. 22)

* Commencement date: 31 December 1993.

Chapter: 155	Title: BANKING ORDINANCE	Gazette Number:
Section: 79A	Heading: Monetary Authority may require provisions of this Part to apply to certain authorized institutions on a consolidated basis	Version Date: 30/06/1997

(1) Subject to subsection (2), for the purposes of the application of any provision of this Part to an authorized institution incorporated in Hong Kong which has any subsidiary, the Monetary Authority may, by notice in writing to the institution, require the provision to apply to the institution-

- (a) on a consolidated basis instead of on an unconsolidated basis; or
- (b) on both a consolidated basis and an unconsolidated basis.

(2) The Monetary authority may, in a notice under subsection (1) to an authorized institution, require the provision of this Part to which the notice relates to apply to the institution on a consolidated basis only in respect of such subsidiaries of the institution as are specified in the notice.

(3) No duty which a subsidiary of an authorized institution may be subject to shall be regarded as contravened by reason of the submission of information by the subsidiary to the institution for the purpose of enabling or assisting the institution to comply with a notice under subsection (1) to the institution.

(Added 95 of 1991 s. 25. Amended 82 of 1992 s. 25)

Chapter:	155	Title:	BANKING ORDINANCE	Gazette Number:	
Section:	81	Heading:	Limitation on advances by authorized institutions	Version Date:	30/06/1997

(1) Subject to subsections (4), (4A), (5) and (6), the financial exposure of an authorized institution incorporated in Hong Kong to- (Amended 49 of 1995 s. 27)

- (a) any one person;
- (b) two or more companies which-
 - (i) are subsidiaries of the same holding company; or
 - (ii) have the same controller (not being a company);
- (c) any holding company and one or more of its subsidiaries; or
- (d) any one person (not being a company) and one or more companies of which that person is a controller,

shall not exceed an amount equivalent to 25% of the capital base of the institution.

(2) The financial exposure of an authorized institution to any person, company or combination thereof referred to in subsection (1)(a), (b), (c) or (d) shall, for the purposes of this section, be taken to be the aggregate of-

- (a) all advances, loans and credit facilities (including letters of credit) given to;
- (b) the value of the institution's holdings of shares and debentures (within the meaning of those terms in section 2 of the Companies Ordinance (Cap. 32)) and other debt securities issued by; and
- (c) the principal amount, multiplied by the factor specified by the Monetary Authority pursuant to subsection (3) for items referred to in Table B of the Third Schedule in relation to the institution where, in respect of that institution, the other party is,

that person, company or combination thereof, as the case may be.

(3) The Monetary Authority may, by notice in the Gazette, specify the factor for the purposes of subsection (2)(c), and any such notice may specify different factors for different items referred to in that subsection.

(4) Where-

- (a) the person referred to in subsection (1)(a) is a subsidiary or holding company of an authorized institution or a subsidiary of such holding company;
- (b) the holding company referred to in subsection (1)(b)(i) is an authorized institution or a holding company of an authorized institution; or
- (c) the holding company referred to in subsection (1)(c) is a holding company of an authorized institution,

the Monetary Authority may, by notice in writing to the institution, and subject to such conditions as he may think proper to attach thereto in any particular case, specify that subsection (1)(a), (b)(i) or (c), as the case may be, shall not apply for the purpose of determining the financial exposure of that institution and, accordingly, subsection (1)(a), (b)(i) or (c), as the case may be, shall not apply.

(4A) Where-

- (a) the holding company referred to in subsection (1)(b)(i) is The Financial Secretary Incorporated established under the Financial Secretary Incorporation Ordinance (Cap 1015);
- (b) the controller referred to in subsection (1)(b)(ii) is the Government;
- (c) the holding company referred to in subsection (1)(c) is The Financial Secretary Incorporated; or

(d) the controller referred to in subsection (1)(d) is the Government, then subsection (1)(b)(i) or (ii), (c) or (d), as the case may be, shall not apply for the purpose of determining the financial exposure of the authorized institution concerned and, accordingly, that subsection shall not apply. (Added 49 of 1995 s. 27)

(5) Where-

- (a) an authorized institution is financially exposed to a trustee in respect of 2 or more trusts; and
- (b) any person, company or combination thereof referred to in subsection (1)(a), (b), (c) or (d) is that trustee,

the Monetary Authority may, by notice in writing to the institution, and subject to such conditions as he may think proper to attach thereto in any particular case, specify that the financial exposure of that institution to that person, company or combination thereof, as the case may be, may exceed an amount equivalent to 25% of the capital base of the institution by an amount not more than the amount specified in that notice and, accordingly, such financial exposure of that institution may exceed the first-mentioned amount by an amount not more than the amount specified in that notice.

(6) For the purposes of this section, the financial exposure of an authorized institution shall not included-

- (a) any financial exposure to other authorized institutions;
- (b) any financial exposure to the extent to which it is-
 - (i) secured by-
 - (A) a cash deposit;
 - (B) a guarantee;
 - (C) another undertaking which, in the opinion of the Monetary Authority, is similar to a guarantee; or
 - (D) securities issued, or guaranteed, by the central government or the central bank of any Tier 1 country within the meaning of the Third Schedule; or (Added 67 of 1992 s. 6)
 - (ii) covered by a letter of comfort, where such cash deposit, guarantee, other undertaking, securities or letter of comfort, as the case may be, is accepted by the Monetary Authority, and subject to such conditions as he may think proper to attach thereto, either generally or in any particular case; (Amended 67 of 1992 s. 6)
- (c) any financial exposure acquired by the purchase of bills of exchange or documents of title to goods where the holder of such bills or documents is entitled to payment outside Hong Kong for goods exported from Hong Kong;
- (d) any advances, loans and credit facilities made against any bills or documents referred to in paragraph (c);
- (e) any financial exposure to the Government;
- (f) any financial exposure to any other government, except a government which is, in the opinion of the Monetary Authority one that should not be accepted for the purposes of this section;
- (g) any financial exposure to a bank incorporated outside Hong Kong which is not an authorized institution where any such bank is, in the opinion of the Monetary Authority, adequately supervised by the relevant banking supervisory authority; (Replaced 49 of 1995 s. 27)
- (h) any share capital or debt securities held as security for facilities granted by the institution or, subject to subsection (7), acquired by it in the course of the satisfaction of debts due to it;
- (i) any financial exposure acquired under an underwriting or subunderwriting contract-
 - (i) where such financial exposure would, but for this subsection, be financial exposure under subsection (2)(b);
 - (ii) for a period not exceeding 7 working days, or such further period as the Monetary

Authority approves in writing, and subject to such conditions as he may think proper to attach thereto in any particular case;

- (j) any financial exposure acquired under an underwriting or subunderwriting contract where such financial exposure would, but for this subsection, be financial exposure under subsection (2)(c);
- (k) any indemnity given by the institution to a person to protect that person against any damages which may be incurred by the person as a result of the person registering a transfer of shares where-
 - (i) the instrument by means of which the transfer has been effected, or purports to have been effected, has been provided, or purports to have been provided, by a subsidiary of the institution;
 - (ii) the authenticating signature on the instrument has been imprinted on it by a machine used by the subsidiary to imprint that signature on such instruments; and
 - (iii) that signature was unlawfully so imprinted on that instrument, or any financial guarantee given by the institution to that person in respect of any like indemnity given by that subsidiary to that person;
- (ka) any financial exposure to a multilateral development bank; (Added 49 of 1995 s. 27)
- (kb) any financial exposure to the Housing Authority, within the meaning of the Housing Ordinance (Cap 283), arising from guarantees it gives for the purposes of the Home Ownership Scheme or Private Sector Participation Scheme; (Added 49 of 1995 s. 27)
- (l) any financial exposure to the extent to which it has been written off, or to which specific provision has been made for it, in the books of the institution. (Added 67 of 1992 s. 6)

(6A) The Financial Secretary may, by notice in the Gazette, amend subsection (6). (Added 49 of 1995 s. 27)

(7) All share capital and debt securities acquired by an authorized institution in the course of the satisfaction of debts due to it shall be disposed of at the earliest suitable opportunity, and in any event not later than 18 months after the acquisition thereof, or within such further period as the Monetary Authority approves in writing, and subject to such conditions as he may think proper to attach thereto, in any particular case.

(8) For the purposes of this section-

- (a) the expression "person" (人) includes any partnership, any public body and any body of persons, corporate or unincorporate;
- (b) the expressions "debt securities" (債務證券) and "multilateral development bank" (多邊發展銀行) shall mean debt securities and multilateral development bank as respectively defined in paragraph 1 of the Third Schedule; (Replaced 49 of 1995 s. 27)
- (c) advances, loans, credit facilities, guarantees or liabilities shall be deemed to be granted to and to be outstanding in relation to any person liable or contingently liable thereon whether as principal debtor, guarantor, or otherwise:

Provided that the reference in this paragraph to a guarantor shall not include a person (not being an authorized institution) who guarantees the obligations of another under-

- (i) a hire purchase agreement, that is to say an agreement for the bailment of goods under which the bailee may buy the goods, or under which the property in the goods will or may pass to the bailee; or
- (ii) a conditional sale agreement, that is to say an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to payment of instalments or otherwise as may be specified in the agreement are fulfilled; and
- (d) a partnership of which an authorized institution is a member shall be deemed to be a subsidiary of that institution.

(9) Every director and every manager of an authorized institution which contravenes subsection (1) commits an offence and is liable-

- (a) on conviction upon indictment to a fine at tier 7 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine at tier 3 for every day during which the offence continues; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues. (Amended 4 of 1997 s. 27)

(Replaced 95 of 1991 s. 27. Amended 82 of 1992 s. 25)

Chapter: 155	Title:	BANKING ORDINANCE	Gazette Number:
Section: 85	Heading:	Limitation on advances to employees	Version Date: 30/06/1997

(1) An authorized institution shall not provide to any one of its employees any facility specified in subsection (2) to an aggregate amount of such facilities in excess of one year's salary for the employee. (Amended 95 of 1991 s. 30)

(2) For the purposes of subsection (1) the following facilities are specified-

- (a) the granting, or permitting to be outstanding, of unsecured advances, unsecured loans or unsecured credit facilities including unsecured letters of credit; (Amended 95 of 1991 s. 30)
- (b) the giving of unsecured financial guarantees; and
- (c) the incurring of any other unsecured liability.

(3) Every director and every manager of an authorized institution which contravenes this section commits an offence and is liable-

- (a) on conviction upon indictment to a fine at tier 6 and to imprisonment for 12 months; or
- (b) on summary conviction to a fine at tier 5 and to imprisonment for 6 months,

and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues. (Amended 4 of 1997 s. 27)

Chapter: 155	Title: BANKING ORDINANCE	Gazette Number:
Section: 98	Heading: Capital adequacy ratio	Version Date: 30/06/1997

PART XVII

CAPITAL ADEQUACY RATIO OF AUTHORIZED INSTITUTIONS

(1) Subject to this Part and Part X, an authorized institution incorporated in Hong Kong shall not, at any time, have a capital adequacy ratio of less than 8 per cent as calculated in accordance with the provisions of the Third Schedule and subsection (2) except that any requirement under section 79A(1) referred to in that Schedule shall not apply in calculating such capital adequacy ratio. (Varied L.N. 413 of 1989) (Amended 95 of 1991 s. 39)

(2) Subject to subsection (2A), for the purposes of calculating the capital adequacy ratio of an authorized institution which has any subsidiary, the Monetary Authority may, by notice in writing to the institution, require the capital adequacy ratio of the institution to be calculated- (Amended 82 of 1992 s. 25)

- (a) on a consolidated basis instead of on an unconsolidated basis; or
- (b) on both a consolidated basis and an unconsolidated basis. (Replaced 95 of 1991 s. 39)

(2A) The Monetary Authority may, in a notice under subsection (2) to an authorized institution, require the capital adequacy ratio of the institution to be calculated on a consolidated basis only in respect of such subsidiaries of the institution as are specified in the notice. (Added 95 of 1991 s. 39. Amended 82 of 1992 s. 25)

(3) The Financial Secretary may, by notice in the Gazette, vary the percentage specified in subsection (1).

(Enacted 1986)

Chapter: 155	Title: BANKING ORDINANCE	Gazette Number:
Section: 121	Heading: Disclosure of information relating to authorized institutions	Version Date: 30/06/1997

- (1) Subject to subsection (3), and notwithstanding section 120, the Monetary Authority may disclose information to an authority in a place outside Hong Kong where-
- (a) that authority exercises functions in that place corresponding to the functions of-
 - (i) the Monetary Authority; or
 - (ii) an authorized statutory office within the meaning of section 120(5A); and
 - (b) in the opinion of the Monetary Authority-
 - (i) that authority is subject to adequate secrecy provisions in that place; and
 - (ii) it is desirable or expedient that information should be so disclosed in the interests of depositors or potential depositors or the public interest; or

- (iii) such disclosure will enable or assist the recipient of the information to exercise his functions and it is not contrary to the interests of depositors or potential depositors or the public interest that the information should be so disclosed. (Replaced 95 of 1991 s. 41)

(2) Subject to subsection (3) and notwithstanding section 120, the Monetary Authority may, if he considers that it is in the interests of customers of the representative office, provide to the appropriate recognized banking supervisory authority of a place outside Hong Kong which is, in his opinion, subject to adequate secrecy provisions in that place information on matters relating to the affairs of a local representative office which is maintained by a bank incorporated in that place or in respect of which the Monetary Authority is of the opinion that the authority has primary supervisory responsibility. (Amended 49 of 1995 s. 37)

(2A) (Repealed 95 of 1991 s. 41)

(3) Under no circumstances shall the Monetary Authority provide any information under this section relating to the affairs of any individual customer of an authorized institution or a local representative office. (Amended 95 of 1991 s. 41)

(Amended 82 of 1992 s. 25)

Chapter:	155	Title:	BANKING ORDINANCE	Gazette Number:	25 of 1998 s. 2
Section:	122	Heading:	Winding-up of authorized institutions	Version Date:	01/07/1997

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

(1) The provisions of the Companies Ordinance (Cap 32) with regard to a creditors' voluntary winding-up shall not apply to authorized institutions.

(2) On a petition by the Financial Secretary, acting in accordance with a direction of the Governor in Council under section 53(1)(iii), the Court of First Instance may-

(a) on any ground specified in section 177 of the Companies Ordinance (Cap 32);
or

(b) if it is satisfied that it is in the public interest that the authorized institution or former authorized institution should be wound up,

order the winding-up of an authorized institution or former authorized institution in accordance with the provisions of the Companies Ordinance (Cap 32) relating to the winding-up of companies.

(3) Where before the presentation of a petition for the winding up of an authorized institution by the Court of First Instance, and whether or not the petition is presented by the Financial Secretary, there has in respect of the institution been a direction given under section 52(1)(C) which has continued in force at all times until the presentation of the petition, and a winding-up order is made thereon, then, notwithstanding the provisions of section 184(2) of the Companies Ordinance (Cap 32), the winding up of the institution by the Court of First Instance shall, for the purposes of sections 170, 179, 182, 183, 266, 267, 269 and 274, and section 271(1)(d), (e), (h), (i), (j), (k), (l) and (o), of the Ordinance, be deemed to have commenced at the time the direction was so given. (Replaced 49 of 1995 s. 38. Amended 4 of 1997 s. 18)

(4) Nothing in section 182 of the Companies Ordinance (Cap 32) shall invalidate any disposition of the business or property of an authorized institution made by the Manager of the institution, or by the institution under the direction of the Manager, acting in good faith in the course of managing the affairs, business and property of the institution. (Replaced 49 of 1995 s. 38)

(5) Where the Financial Secretary is entitled to petition the Court of First Instance by virtue of

section 117(5)(f), the Court of First Instance may wind up a deposit-taking company or restricted licence bank or former deposit-taking company or restricted licence bank in accordance with the provisions of the Companies Ordinance (Cap 32) relating to the winding-up of companies if-

- (a) the deposit-taking company or restricted licence bank is unable to pay sums due and payable to its depositors or is able to pay such sums only by defaulting on its obligations; or
- (b) the value of the deposit-taking company's or restricted licence bank's assets is less than the amount of its liabilities. (Replaced 3 of 1990 s. 47)

(6) Nothing in this section shall authorize the winding-up of a former deposit-taking company or restricted licence bank which does not continue to have any liability in respect of any deposit for which it had a liability at the time when it was authorized. (Amended 3 of 1990 s. 47; 49 of 1995 s. 38)

(Amended 25 of 1998 s. 2)

Chapter:	155	Title:	BANKING ORDINANCE	Gazette Number:	
Section:	132A	Heading:	Appeals	Version Date:	30/06/1997

- (1) Any person (howsoever described) aggrieved by-
- (a) a decision of the Monetary Authority under section 16(1)(b) or (3A)(b), 25(1) or (2), 44(5), 46(5), 49(5), 51A(5), 52(1)(A), (B) or (C) or (3A), 53G(7) or 118C(1)(b);
 - (b) the attachment by the Monetary Authority of any conditions to the person's authorization under section 16(1)(a), (3A)(a) or (5) or to the person's certificate of approval under section 118C(1)(a) or (4);
 - (c) any conditions referred to in section 18(4)(c) or (5), 22(4)(c) or (5), 24(5)(c) or (6) or 25(3)(c) or (4) attached to a consent given to the person pursuant to section 18(4), 22(4), 24(5) or 25(3), as the case may be;
 - (d) the refusal by the Monetary Authority to grant approval under section 44(1), 46(1), 49(1), 51A(2) or 69(1);
 - (e) any conditions to which an approval under section 44(1), 46(1), 49(1) or 51A(2) is made subject by the Monetary Authority under section 44(4), 46(4), 49(4) or 51A(4), as the case may be;
 - (f) a refusal to grant consent under section 71(1) or 73(1) or (1A), conditions attached to a consent under section 71(1), the withdrawal of consent under section 71(3) or the amendment under section 71(3) of conditions attached to a consent;
 - (g) a requirement in a notice under section 100(2) or 104(2) served on the person;
 - (h) a variation of the capital adequacy ratio or liquidity ratio contained in a notice under section 101(1) or 105(1), as the case may be, served on the person,

may appeal to the Governor in Council against the decision, conditions, refusal, withdrawal, requirement or variation, but that decision or those conditions, or that refusal, withdrawal, requirement or variation, as the case may be, shall take effect immediately, notwithstanding that an appeal has been or may be made under this subsection.

(2) Any authorized institution aggrieved by the proposed revocation of its authorization under section 22(1) may appeal to the Governor in Council against the proposed revocation.

(3) Any person aggrieved by a decision of the Monetary Authority to serve-

- (a) a conditional notice of consent or notice of objection (within the meaning of section 70) on him;
- (b) a notice of objection (within the meaning of section 70A) on him,

may appeal to the Governor in Council against the decision, but that decision shall take effect immediately, notwithstanding that an appeal has been or may be made under this subsection.

(4) Any authorized institution aggrieved by a requirement in a notice under section 95(1) may appeal to the Financial Secretary against the requirement, but that requirement shall take effect immediately, notwithstanding that an appeal has been or may be made under this subsection.

(5) Any approved money broker aggrieved by the proposed revocation of its approval under section 118D(1) may appeal to the Governor in Council against the proposed revocation.

(Added 4 of 1997 s. 21)

Chapter:	155	Title:	BANKING ORDINANCE	Gazette Number:	
Section:	135	Heading:	Power to amend Schedules	Version Date:	30/06/1997

(1) The Governor in Council may, by notice in the Gazette, amend the First, Seventh or Eighth

Schedule. (Amended 49 of 1995 s. 46)

(2) The Legislative Council may, by resolution, amend the Second or Thirteenth Schedule.

(3) The Financial Secretary may, by notice in the Gazette, amend the Third, Fourth, Fifth, Ninth, Tenth, Eleventh or Twelfth Schedule. (Amended 95 of 1991 s. 48; 49 of 1995 s. 46)

(4) (Repealed 95 of 1991 s. 48)

(Amended 4 of 1997 s. 23)

Chapter: 155	Title: BANKING ORDINANCE	Gazette Number:
Section: 150	Heading: Transitional provisions in relation to amendments made by Banking (Amendment) (No. 2) Ordinance 1991	Version Date: 30/06/1997

(1) In this section-
"relevant day" (有關日期) means the day of *commencement of the relevant Ordinance;
"relevant Ordinance" (有關條例) means the Banking (Amendment) (No. 2) Ordinance 1991 (95 of 1991).

(2) Section 70 shall not apply to a person becoming a controller of an authorized institution on or from the relevant day where the acts or circumstances by virtue of which he became such a controller substantially occurred before the relevant day.

(3) The definition of "controller" in section 2(1), and sections 70, 72, 72A and 126, as in force immediately before the relevant day, shall, on and from the relevant day, apply to a person referred to in subsection (2) as they would have applied to that person if the relevant Ordinance had never been enacted.

(4) Where, immediately before the relevant day, there was in existence an application for an approval under section 70 or 72 in relation to which the Commissioner had not granted, or refused to grant, such approval, then, at any time on and from the relevant day, the Commissioner may grant, or refuse to grant, such approval as if the relevant Ordinance had never been enacted, and any such grant of, or refusal to grant, such approval made on or after the relevant day shall have such force or effect or operation as such grant of, or refusal to grant, such approval would have had if the relevant Ordinance had never been enacted.

(5) Where any person to whom section 70 or 72, as in force immediately before the relevant day, applied to had not, before the relevant day, made an application under that section for an approval in respect of the matter by virtue of which that section applies to him, then, on and from the relevant day, that section shall apply to him in respect of such matter as if the relevant Ordinance had never been enacted.

(6) Where, immediately before the relevant day, there was in existence an approval (including any conditions to which such approval is subject), or refusal to grant an approval, under section 70 or 72, then, on and from the relevant day, any such approval (including any conditions to which such approval is subject) or refusal shall have such force or effect or operation as such approval or refusal would have continued to have had if the relevant Ordinance had never been enacted.

(7) For the avoidance of doubt, it is hereby declared that where subsection (3), (4), (5) or (6) applies in relation to any person at any time on and from the relevant day, such application shall be without prejudice to the application of the provisions of Part XIII in relation to such person at any time on and from the relevant day.

- (8) Where an authorized institution contravenes section 74(1)-
- (a) by failing to appoint not less than one alternate chief executive of the institution; and
 - (b) at any time before the expiration of the period of 6 months immediately following the relevant day, or such further period as the Monetary Authority approves for the purposes of the application of section 71 to any person the institution proposes to appoint as an alternate chief executive, (Amended 82 of 1992 s. 25)

section 74(2) shall not apply in relation to that contravention (including at any time on or after the expiration of that period or further period, as the case may be).

(9) The financial exposure of an authorized institution under section 81(2) shall not include financial exposure for any item referred to in paragraph (c) of that section until a notice under section 81(3) in respect of that item is published in the Gazette.

(10) Where an authorized institution contravenes section 81(1), 83(1) or (2)(a), 87(1), 88(1) or 90(1) at any time before the expiration of the period of one year immediately following the relevant day, or such further period as the Monetary Authority approves in writing in any particular case- (Amended 82 of 1992 s. 25)

- (a) section 81(9), 83(7), 87(3), 88(6) or 90(3), as the case may be, shall not, subject to paragraph (b), apply in relation to that contravention (including at any time on or after the expiration of that period or further period, as the case may be); and
- (b) the institution shall, for so long as that contravention of that section continues, comply with that section as if the words "paid-up capital and reserves" were substituted for the words "capital base" appearing in that section and, accordingly, section 81(9), 83(7), 87(3), 88(6) or 90(3), as the case may be, shall apply in relation to any contravention of that section by that institution as that section applies to that institution with those substituted words.

(Added 95 of 1991 s. 51)

Chapter: 155	Title: BANKING ORDINANCE	Gazette Number:
Schedule: 3	Heading: CAPITAL ADEQUACY RATIO	Version Date: 30/06/1997

[sections 98 & 135(3)]

1. In this Schedule-

"bank" (銀行) means-

- (a) any authorized institution (other than any authorized institution the authorization of which is for the time being suspended under section 24 or 25 of this Ordinance); and
- (b) any bank incorporated outside Hong Kong which is not an authorized institution, except such a bank-
 - (i) which, in the opinion of the Monetary Authority, is not adequately supervised by the relevant banking supervisory authority; or
 - (ii) the licence or other authorization of which to carry on banking business is for the time being suspended; (Replaced 49 of 1995 s. 50)

"book value" (帳面價值) in relation to any thing means its current book value after deducting the amount of any specific provision made in the books against a reduction in its value;

"capital base" (資本基礎) means the capital base of an authorized institution determined in its value;

"Claims on or claims guaranteed by, authorized institutions in Hong Kong" (對香港的認可機構的申索或由其擔保的申索) do not include any claim on or guarantee by an authorized institution the authorization of which is for the time being suspended under this Ordinance; (Amended 49 of 1995 s. 50)

"Core Capital" (核心資本) means the sum, calculated in Hong Kong dollars, of the book values of the capital items listed in paragraph 3(a) to (f);

"debt securities" (債務證券) means any securities other than shares or stocks;

"external sovereign debt" (對外國債) means cross-border debt contracted by, or guaranteed by, a central government including any cross-border debt contracted by, or guaranteed by, commercial or other non-central government entities where there are factors indicative of a general inability for such entities to comply with their debt terms due to the unavailability of foreign currency, central government restrictions or regulations, or any other factor indicative of severe transfer risk problems; (Added L.N. 307 of 1995)

"gold bullion held on an allocated basis" (特別劃分方式持有的黃金) means gold bullion held by a person other than the authorized institution, to the order of the authorized institution, and which is separately ascertainable; "guarantee" (擔保) includes indemnity;

"multilateral development bank" (多邊發展銀行) means the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Inter-American Investment Corporation, the Asian Development Bank, the African Development Bank, the European Investment Bank, the Nordic Investment Bank, the Caribbean Development Bank, the European Bank for Reconstruction and Development or the International Finance Corporation; (Amended L.N. 407 of 1991; L.N. 336 of 1996)

"Net/Gross Ratio" (淨額／總額比率) means the ratio of net replacement cost to gross replacement cost for the contracts referred to in items 12 to 16 of Table B covered by a valid bilateral netting agreement and is calculated as the ratio, expressed as a percentage, of the net amount, if positive, of the sum of the positive and negative mark-to-market values, calculated in Hong Kong dollars, of the contracts (provided that the net amount, if negative, should be taken as zero) to the sum of the positive mark-to-market values, calculated in Hong Kong dollars, of the contracts; (Added L.N. 336 of 1996)

"public sector entity in Hong Kong" (香港公營單位) means the Mass Transit Railway Corporation, the Kowloon-Canton Railway Corporation, the Hong Kong Housing Authority and any body specified

- by the Monetary Authority in a notice published in the Gazette;
- "public sector entity of any other Tier 1 country" (任何其他第 1 級國家的公營單位) means an entity which is regarded as a public sector entity by a recognized banking supervisory authority in the place in which it is incorporated;
- "residential mortgage" (住宅按揭) means a mortgage under which-
- (a) the borrower is an individual person;
 - (b) the principal sum does not exceed 90% of the purchase price or the market value of the property, whichever amount is the lower;
 - (c) the debt is secured by a first legal charge on the property;
 - (d) the property secured by the charge is used as the borrower's residence or as a residence by a tenant of the borrower;
- "risk weighted exposure" (加權風險值) means the risk weighted exposure of an authorized institution determined in accordance with paragraph 4;
- "Supplementary Capital" (附加資本) means the sum, calculated in Hong Kong dollars, of the book values of the capital items listed in paragraph 3(g) to (o) calculated in accordance with that paragraph;
- "Tier 1 country" (第 1 級國家) means a country which is a member of the Organization for Economic Co-operation and Development or a country which has concluded a special lending arrangement with the International Monetary Fund associated with the Fund's General Arrangements to Borrow, and also includes Hong Kong but excludes any country which has rescheduled its external sovereign debt, whether to central government or non-central government creditors, within the previous 5 years; (Amended L.N. 307 of 1995)
- "Tier 2 country" (第 2 級國家) means any country which is not a tier 1 country;
- "valid bilateral netting agreement" (有效雙邊淨額結算協議) means a bilateral netting agreement in respect of which the following conditions are satisfied-
- (a) the bilateral netting agreement is in writing;
 - (b) the bilateral netting agreement creates a single legal obligation for all individual contracts covered by the agreement, and provides, in effect, that the authorized institution would have a single claim or obligation either to receive or pay only the net amount of the sum of the positive and negative mark-to-market values of the individual contracts covered by the agreement in the event that a counterparty to the agreement, or a counterparty to whom the agreement has been validly assigned, fails to comply with any obligation under that agreement due to default, insolvency, bankruptcy, or similar circumstance;
 - (c) the authorized institution has been given legal advice to the effect that in the event of a challenge in a court of law, including a challenge resulting from default, insolvency, bankruptcy, or similar circumstance, the relevant court or administrative authority would find the authorized institution's exposure to be the net amount under-
 - (i) the law of Hong Kong or, in the case of a subsidiary of the authorized institution which is incorporated outside Hong Kong and which is included in the calculation of the capital adequacy ratio of the institution on a consolidated basis, the law of the jurisdiction in which the subsidiary is incorporated;
 - (ii) the law of the jurisdiction in which the counterparty is incorporated or the equivalent location in the case of non-corporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;
 - (iii) the law that governs the individual contracts covered by the bilateral netting agreement; and
 - (iv) the law that governs the bilateral netting agreement;
 - (d) the authorized institution establishes and maintains procedures to monitor developments in any law relevant to the bilateral netting agreement and to ensure that the bilateral netting agreement continues to satisfy the conditions applicable to this definition;

- (e) the authorized institution manages the transactions covered by the bilateral netting agreement on a net basis;
- (f) the authorized institution maintains in its files documentation adequate to support the netting of the contracts covered by the bilateral netting agreement; and
- (g) the bilateral netting agreement is not subject to a provision that permits the non-defaulting counterparty to make only limited payment, or no payment at all, to the defaulter or the estate of the defaulter, regardless of whether or not the defaulter is a net creditor under the agreement. (Added L.N. 307 of 1995)

2. The capital adequacy ratio of an authorized institution shall be calculated as the ratio, expressed as a percentage, of its capital base, determined in accordance with paragraph 3, to its risk weighted exposure determined in accordance with paragraph 4.

3. The capital base of an authorized institution shall be determined by taking the sum, calculated in Hong Kong dollars, of the book values (except in relation to subparagraph (i), where the difference between the market value and the book value is to be taken) of-

Category I-Core Capital

- (a) its paid-up ordinary share capital other than any shares issued by the authorized institution through capitalising any property revaluation reserves referred to in subparagraph (h); (Amended L.N. 336 of 1996)
- (b) its paid-up, irredeemable, non-cumulative preference shares, that is to say, shares that are irredeemable or that may be redeemed only with the prior consent of the Monetary Authority; (Amended L.N. 82 of 1993)
- (c) its share premium account;
- (d) its reserves other than those referred to in subparagraphs (e), (g), (h) and (i);
- (e) its profit and loss account including its current year's profit or loss;
- (f) where the Monetary Authority requires under section 79A(1) a provision of Part XV to apply to the authorized institution on a consolidated basis, or requires under section 98(2) the capital adequacy ratio of the authorized institution to be calculated on a consolidated basis, minority interests arising on such consolidation in the equity of its subsidiaries: (Amended 95 of 1991 s. 52)

Provided that the amount to be included as Core Capital shall be determined by deducting therefrom the book value calculated in Hong Kong dollars of the goodwill of the institution;

Category II-Supplementary Capital

- (g) its inner reserves;
- (h) its reserves on revaluation of-
 - (i) its land and interests in land other than any interest in land mortgaged to it to secure a debt; and
 - (ii) its share of the net asset value of any subsidiary to the extent that such value has changed as a result of a revaluation of such subsidiary's land and interests in land other than any interest in land mortgaged to such subsidiary to secure a debt:

Provided that such reserves shall not exceed 70% of any surplus on revaluation of each of sub-subparagraphs (i) and (ii).

For the purpose of this subparagraph "reserves" (儲備) includes any shares issued by the authorized institution through capitalising reserves arising from revaluation of sub-subparagraphs (i) and (ii); (Replaced L.N. 336 of 1996)

- (i) its latent reserves (i.e. the difference between the market value and the book value) determined upon revaluation, of long-term holding of equity securities listed on the United Exchange or on any exchange referred to in the Schedule to the *Securities (Specification of Approved Assets, Liquid Assets and Ranking Liabilities) Notice (Cap 333 sub. leg.): (Amended L.N. 210 of 1990; L.N. 63 of 1991)

- Provided that-
- (i) the amount of any increase in value to be included shall be limited to 45% of such increase;
 - (ii) the amount of any diminution in value is deducted;
- (j) its general provisions against doubtful debts but not including any provisions against specific or identified losses and against the diminution in the value of particular assets:
 Provided that the amount included under this subparagraph may not exceed 1.25% of the figure derived by the calculation specified in subparagraph (a) of paragraph 4 carried out in relation to the authorized institution;(Amended L.N. 210 of 1990)
- (k) its perpetual subordinated debt where the Monetary Authority is satisfied that under the terms of the debt instrument the following conditions are met-
- (i) the claims of the lender against the authorized institution are fully subordinated to those of all unsubordinated creditors;
 - (ii) the debt is not secured against any assets of the authorized institution;
 - (iii) the money advanced to the authorized institution is permanently available to it;
 - (iv) the debt is not repayable without the prior consent of the Monetary Authority;
 - (v) the money advanced to the authorized institution is available to meet losses without the institution being obliged to cease trading;
 - (vi) the authorized institution is entitled to defer the payment of interest where its profitability will not support such payment;
- (l) its paid-up irredeemable cumulative preference shares, that is to say, shares that are irredeemable or that may be redeemed only with the prior consent of the Monetary Authority;
- (m) its term subordinated debt, where the Monetary Authority is satisfied that under the terms of the debt instrument the following conditions are met-
- (i) the claims of the lender against the authorized institution are fully subordinated to those of all unsubordinated creditors;
 - (ii) the debt is not secured against any assets of the authorized institution;
 - (iii) the debt has a minimum initial period to maturity of more than 5 years (and notwithstanding that that period may be reduced with the prior consent of the Monetary Authority); (Amended L.N. 210 of 1990)
 - (iv) where the debt is repaid prior to maturity, the debt is not repayable without the prior consent of the Monetary Authority: (Amended L.N. 449 of 1994)
- Provided that-
- (A) amounts included under this subparagraph shall be discounted by 20% each year during the 4 years immediately preceding maturity; and
 - (B) the total amount included under this subparagraph and subparagraph (n) shall not exceed in total, 50% of the total of the Core Capital;
- (n) its paid-up term preference shares, where the Monetary Authority is satisfied that the shares have been issued and remain subject to the following conditions-
- (i) the shares have a minimum initial period to maturity of more than 5 years;
 - (ii) the shares are not redeemable without the prior consent of the Monetary Authority:
- Provided that-
- (A) amounts included under this subparagraph shall be discounted by 20% of the original amount each year during the 4 years immediately preceding maturity; and
 - (B) the total amount included under this subparagraph and subparagraph (m) shall not exceed in total, 50% of the total of the Core Capital; and
- (o) where the Monetary Authority requires under section 79A(1) a provision of Part XV to apply to the authorized institution on a consolidated basis, or requires under section 98(2) the capital adequacy ratio of the authorized institution to be calculated on a consolidated basis, any minority interests arising on such consolidation in the paid-up irredeemable

cumulative preference shares and paid-up term preference shares of its subsidiaries: (Amended 95 of 1991 s. 52)

Provided that the amount to be included as Supplementary Capital shall not exceed the total of the amount determined as Core Capital,

and by deducting therefrom the sum calculated in Hong Kong dollars of the book value of-

- (A) its shareholding in any company which is a subsidiary or holding company of the authorized institution, other than-
 - (i) any shareholding that falls to be deducted under subparagraph (B), (C), (D);
 - (ii) where the Monetary Authority requires under section 79A(1) a provision of Part XV to apply to the authorized institution on a consolidated basis, or requires under section 98(2) the capital adequacy ratio of the authorized institution to be calculated on a consolidated basis, its shareholding in any subsidiary the subject of such consolidation; and (Amended 95 of 1991 s. 52; L.N. 336 of 1996)
 - (iii) the authorized institution's reserves arising from the revaluation of the land and interests in land of any subsidiary not falling within the meaning of reserves under subparagraph (h); (Added L.N. 336 of 1996)
- (B) its loans to, shares and debentures issued by, and its guarantees of the liabilities of, connected companies of the authorized institution (other than shares that fall to be deducted under subparagraph (D)), where in the opinion of the Monetary Authority the institution has made the loans, is holding the shares or debentures or, as the case may be, has given the guarantees, other than in the ordinary course of business; and for the purposes of this subparagraph "shares" (股份) and "debentures" (債權證) mean shares and debentures within the meaning of section 2(1) of the Companies Ordinance (Cap 32), and a company shall be treated as a connected company of the institution if it is a subsidiary or the holding company of the institution, or is otherwise of a description falling within section 64(1)(b), (c), (d) or (e);
- (C) its shareholding in any company in which the authorized institution is entitled to exercise, or control the exercise of, more than 20% of the voting power at general meetings of the company; and
- (D) its holding of shares, stocks or debt securities issued by any bank unless the Monetary Authority is satisfied that the holding is not the subject of an arrangement in which 2 or more persons agree to hold each other's capital or is not otherwise a strategic investment.

4. The risk weighted exposure of an authorized institution shall be that figure derived by-

- (a) adding together all the products achieved by-
 - (i) taking the book value, calculated in Hong Kong dollars, of each of the items referred to in Table A in relation to the authorized institution; and, in relation to each item multiplying that value by the risk weight specified in Table A in relation to that item; and
 - (ii) multiplying the credit equivalent amount of each of the items referred to in Table B by the appropriate risk weight specified in Table A as if the items to which they relate were on-balance sheet (Table A) items provided that in relation to items 12 to 16 referred to in Table B, the risk weight shall not exceed 50%. The credit equivalent amount may be obtained- (Amended L.N. 336 of 1996)
 - (A) in relation to items 12 to 16 referred to in Table B where the current exposure method of valuation is used, by adding- (Amended L.N. 336 of 1996)
 - (I) the current exposure, which, in the case of contracts referred to in items 12 to 16 of Table B not covered by a valid bilateral netting agreement is the sum of the positive mark-to-market values, calculated in Hong Kong dollars, of the contracts; and in the case of contracts referred to in items 12 to 16 of Table B covered by a valid bilateral netting agreement is the net amount, if positive, of the sum of the positive and

- negativemark-to-market values, calculated in Hong Kong dollars, of each contract covered by the agreement; and (Amended L.N. 336 of 1996)
- (II) the potential future credit exposure, which, in the case of-
- (aa) contracts referred to in items 12 to 16 of Table B not covered by a valid bilateral netting agreement is derived by multiplying the principal amount of each contract by the credit conversion factor specified in items 12(b), 13(b), 14, 15 and 16 of Table B;
- (bb) contracts referred to in items 12 to 16 of Table B covered by a valid bilateral netting agreement is derived by adding 40% of the sum of the products derived by multiplying the principal amount, calculated in Hong Kong dollars, of each of those contracts by the credit conversion factor specified in items 12(b), 13(b), 14, 15 and 16 of Table B and 60% of the Net/Gross Ratio multiplied by the sum of the products derived by multiplying the principal amount, calculated in Hong Kong dollars, of each of those contracts by the credit conversion factor specified in items 12(b), 13(b), 14, 15 and 16 of Table B; (Replaced L.N. 336 of 1996)
- (B) in any case apart from those mentioned in sub-sub-subparagraph (A), including in relation to items 12 and 13 referred to in Table B where the original exposure method of valuation is used, by taking the principal amount, calculated in Hong Kong dollars, of each of the items referred to in Table B in relation to the authorized institution and multiplying the principal amount by the credit conversion factor specified in Table B in relation to that item; and (Replaced L.N. 307 of 1995)
- (b) subtracting from the sum calculated under subparagraph (a) the value of general provisions not included in the capital base of the authorized institution. (Replaced L.N. 210 of 1990. Amended L.N. 234 of 1990)

TABLE A-ON-BALANCE SHEET ITEMS

Category I-Cash items

Item	Nature of item	Risk weight
1.	Notes and coins	0%
2.	Government certificates of indebtedness	0%
3.	Gold bullion in the possession of an authorized institution or held on an allocated basis, to the extent backed by gold liabilities.	0%
4.	Gold held which is not backed by gold liabilities.	100%
5.	Claims to the extent that they are collateralized by cash deposits held by the authorized institution.	0%
6.	Cash items in the course of collection	20%
6A.	Amounts due from the sale of securities, where the authorized institution has executed the transaction on behalf of a customer or for its own account, up to and including the fifth working day after the due settlement date in respect of the transaction. (Added L.N. 146 of 1993)	0%

- | | | |
|-----|---|----|
| 6B. | Amounts due from the purchase of securities, where the authorized institution has executed the transaction on behalf of a customer, up to and including the fifth working day after the due settlement date in respect of the transaction. (Added L.N. 146 of 1993) | 0% |
|-----|---|----|

Category II-Claims on central governments and central banks

Item	Nature of item	Risk weight
7.	Loans to, or loans to the extent that they are guaranteed by, the Exchange Fund.	0%
8.	Loans to, or loans to the extent that they are guaranteed by, the central government or the central government or the central bank of any Tier 1 country	0%
9.	Holdings of fixed interest securities with a residual maturity of under 1 year or floating rate securities of any maturity issued by or guaranteed by the central government or by the central bank of a Tier 1 country, or by the Exchange Fund, or claims to the extent that they are collateralized by such securities.	10%
10.	Holdings of fixed interest securities with a residual maturity of 1 year and over issued by or guaranteed by the central government or by the central bank of a Tier 1 country, or by the Exchange Fund, or claims to the extent that they are collateralized by such securities.	20%
11.	Loans denominated in the currency of a Tier 2 country and funded in that currency, to, or to the extent that they are guaranteed by, the central government or the central bank of that country.	0%
12.	Holdings of fixed interest securities with a residual maturity of under 1 year or floating rate securities of any maturity issued by or guaranteed by the central government or by the central bank of a Tier 2 country, where denominated and funded in the currency of that country.	10%
13.	Holdings of fixed interest securities with a residual maturity of 1 year and over issued by or guaranteed by the central government or by the central bank of a Tier 2 country, where denominated and funded in the currency of that country.	20%
14.	Other claims on the central government or on the central bank of a Tier 2 country.	100%

Category III-Claims on Public Sector Entities

Item	Nature of item	Risk weight
15.	Claims on or to the extent that they are guaranteed by or to the extent that they are collateralized by securities issued by, public sector entities in Hong Kong. (Amended L.N. 336 of 1996)	20%
16.	Claims on or to the extent that they are guaranteed by or to the extent that they are collateralized by securities issued by, public sector entities of any other Tier 1 country. (Amended L.N. 336 of 1996)	20%

17. Claims on public sector entities of a Tier 2 country. 100%

Category IV-Claims on banks

Item	Nature of item	Risk weight
18.	Claims on or to the extent that they are guaranteed by, authorized institutions or banks incorporated in Tier 1 countries.	20%
19.	Claims on or to the extent that they are guaranteed or collateralized by securities issued by, a multilateral development bank.	20%
20.	Claims on or to the extent that they are guaranteed by, any bank other than a bank referred to in item 18 or 19, with a residual maturity of under 1 year.	20%
21.	Claims on or to the extent that they are guaranteed by, any bank other than a bank referred to in item 18 or 19, with a residual maturity of 1 year or more.	100%

Category V-Residential Mortgages

Item	Nature of item	Risk weight
22.	Loans fully secured by a residential mortgage.	50%
23.	Securities backed by residential mortgage and participations in residential mortgages, provided the holders of such securities will not absorb more than their pro rata share of losses in the event of arrears or default on payment of interest on, or principal of, the underlying mortgage loans. (Amended L.N. 336 of 1996)	50%

Category VI-Other assets

Item	Nature of item	Risk weight
24.	Claims on non-bank private sector persons.	100%
25.	Investments in the equity or other capital instruments of other banks, other than where deducted from the capital base.	100%
26.	Premises, plant and equipment and other fixed assets for the authorized institution's own use.	100%
27.	Other interests in land. (Amended L.N. 336 of 1996)	100%
28.	All assets not elsewhere specified.	100%

TABLE B-OFF-BALANCE SHEET ITEMS

Item	Nature of item	Credit conversion factor
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1.	Direct credit substitutes	Irrevocable off-balance sheet obligations which carry the same credit risk as a direct extension of credit. This includes guarantees, the confirming of letters of credit, standby letters of credit serving as financial guarantees for loans, securities and acceptances (including endorsements with the character of acceptances) other than acceptances included in item 3.	100%
2.	Transaction-related contingencies	Contingent liabilities which involve an irrevocable obligation of the authorized institution to pay a beneficiary when a customer fails to perform some contractual, non-financial obligation. This includes performance bonds, bid bonds, warranties and standby letters of credit related to a particular transaction.	50%
3.	Trade-related contingencies	Contingent liabilities which relate to trade related obligations. This includes letters of credit, acceptances on trade bills, shipping guarantees and any other trade related contingencies.	20%
4.	Sale and repurchase agreements (see Note 1)	Arrangements whereby the authorized institution sells a loan, security or other asset to another person with a commitment to repurchase the asset at an agreed price on an agreed future date.	100%
5.	Assets sales or other transactions with recourse (see Note 1)	Assets sales where the holder of the asset is entitled to put the asset back to the authorized institution within an agreed period or should the value or credit quality of the asset deteriorate.	100%
6.	Forward asset purchases (see Note 1)	Commitment to purchase a loan, security or other asset, including under a put option granted by the authorized institution to another party, at specified future date on pre-arranged terms.	100%
7.	Partly paid-up shares and securities (held by the authorized institution)	The unpaid portion of shares or securities which the issuer of such shares or securities may call for at a future date.	100%
8.	Forward forward deposits placed	Any agreement between the authorized institution and another party whereby the institution will place a deposit at an agreed rate of interest with that party at some predetermined future date.	100%

9.	Note issuance and revolving underwriting facilities		
	Arrangements whereby a borrower may draw down funds up to a prescribed limit over a predefined period by making repeated note issues to the market, and where, should the issue prove unable to be placed in the market, the unplaced amount is to be taken up or funds made available by the underwriter of the facility.	50%	
10.	Other commitments with an original maturity of under 1 year or which may be cancelled at any time unconditionally by the authorized institution.	0%	
11.	Other commitments with an original maturity of 1 year or over.	50%	
12.	Exchange rate and gold contracts (see Note 2) (Calculated in accordance with either the original exposure method or the current exposure method) (Amended L.N. 336 of 1996)		
	(a) credit conversion factors to be used in calculating in accordance with original exposure method (see Note 3)- (Amended L.N. 307 of 1995)		
	contracts with original maturity of-		
	(i) 1 year or less; (Amended L.N. 336 of 1996)	2%	
	(ii) over 1 year to 2 years; (Amended L.N. 336 of 1996)	5%	
	(iii) over 2 years, the factor for over 1 year to 2 years plus for each additional year; (Amended L.N. 336 of 1996)	3%	
	(b) credit conversion factors to be used to determine the potential future credit exposure in accordance with the current exposure method-		
	contracts with a residual maturity of-		
	(i) 1 year or less; (Amended L.N. 336 of 1996)	1%	
	(ii) over 1 year to 5 years; (Amended L.N. 336 of 1996)	5%	
	(iii) over 5 years (Added L.N. 336 of 1996)	5%	
			7.5%
13.	Interest rate contracts (see Note 2) (Calculated in accordance with either the original exposure method or the current exposure method)		
	(a) credit conversion factors to be used in calculating in accordance with original exposure method (see Note 3)- (Amended L.N. 307 of 1995)		
	contracts with original maturity of		
	(i) 1 year or less; (Amended L.N. 336 of 1996)	0.5%	
	(ii) over 1 year to 2 years; (Amended L.N. 336 of 1996)	1%	
	(iii) over 2 years, the factor for over 1 year to 2 years plus for each additional year; (Amended L.N. 336 of 1996)	1%	
	(b) credit conversion factors to be used to determine the potential future credit exposure in accordance with the current exposure method-		
	contracts with a residual maturity of-		
	(i) 1 year or less; (Amended L.N. 336 of 1996)		0%
	(ii) over 1 year to 5 years; (Amended L.N. 336 of 1996)		0.5%
	(iii) over 5 years 1. (Added L.N. 336 of 1996)		1.5%

14. Equity contracts (Calculated in accordance with the current exposure method)-
- credit conversion factors to be used to determine the potential future credit exposure in accordance with the current exposure method
- contracts with a residual maturity of-
- | | | |
|-----|---------------------------------------|-----|
| (a) | 1 year or less | 6% |
| (b) | over 1 year to 5 years | 8% |
| (c) | over 5 years (Added L.N. 336 of 1996) | 10% |
15. Precious metals other than gold contracts (Calculated in accordance with the current exposure method)-
- credit conversion factors to be used to determine the potential future credit exposure in accordance with the current exposure method-
- contracts with a residual maturity of-
- | | | |
|-----|---------------------------------------|----|
| (a) | 1 year or less | 7% |
| (b) | over 1 year to 5 years | 7% |
| (c) | over 5 years (Added L.N. 336 of 1996) | 8% |
16. Commodities other than precious metals and gold contracts (Calculated in accordance with the current exposure method)-
- credit conversion factors to be used to determine the potential future credit exposure in accordance with the current exposure method-
- contracts with a residual maturity of-
- | | | |
|-----|---------------------------------------|-----|
| (a) | 1 year or less | 10% |
| (b) | over 1 year to 5 years | 12% |
| (c) | over 5 years (Added L.N. 336 of 1996) | 15% |

Note

1. The appropriate risk weight to be used in relation to transactions to which items 4, 5 and 6 apply, shall be determined on the basis of the nature of the asset and not the nature of the counterparty with whom the transaction has been entered into. Reverse repos (i.e. purchase and resale agreements where the authorized institution is the recipient of the asset) are to be regarded as collateralized loans.

2. In relation to exchange rate and gold contracts and interest rate contracts an authorized institution shall, in determining the credit equivalent amount use either the current exposure method of valuation or, with the agreement of the Monetary Authority, the original exposure method of valuation.
(Amended L.N. 336 of 1996)

3. If an authorized institution nets its obligation with a counterparty under a valid bilateral netting agreement, it may use the following credit conversion factor-

Nature of item	Credit conversion factor
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1. Exchange rate contracts
Credit conversion factors to be used in calculating contracts with an original maturity of-
 - (a) 1 year or less (Amended L.N. 336 of 1996) 1.5%
 - (b) over 1 year to 2 years (Amended L.N. 336 of 1996) 3.75%
 - (c) over 2 years, the factor for over 1 year to 2 years plus for each additional year (Amended L.N. 336 of 1996) 2.25%

2. Interest rate contracts
Credit conversion factors to be used in calculating contracts with an original maturity of-
 - (a) 1 year or less. (Amended L.N. 336 of 1996) 0.35%
 - (b) over 1 year to 2 years (Amended L.N. 336 of 1996) 0.75%
 - (c) over 2 years, the factor for over 1 year to 2 years plus for each additional year (Amended L.N. 336 of 1996) 0.75%

(Third Schedule replaced L.N. 412 of 1989. Amended 82 of 1992 s. 25)

* This Notice was omitted as spent in Issue 7 of the Loose-leaf Edition of Laws. For text, please see L.N. 402 of 1990, as amended by L.N. 278 of 1991 and L.N. 181 of 1992.

Chapter: 155	Title: BANKING ORDINANCE	Gazette Number: L.N. 88 of 1997
Schedule: 10	Heading: NOTICE RELATING TO AUTHORIZED INSTITUTION'S AUDITED ANNUAL ACCOUNTS	Version Date: 30/06/1997

[sections 60(1) & (11) &
135(3)]

PART 1

PUBLICATION OF NOTICE

The notice shall be published in one English language newspaper (and in the English language unless otherwise approved by the Monetary Authority) and one Chinese language newspaper (and in the Chinese language unless otherwise approved by the Monetary Authority), each of which shall be a newspaper circulating in Hong Kong.

PART 2

MATTERS TO BE CONTAINED IN NOTICE

The notice shall contain-

- (a) a copy of the institution's audited annual accounts for the financial year to which the notice relates; and (Amended L.N. 88 of 1997)
- (b) a copy of the report of the auditors pursuant to section 141 of the Companies Ordinance (Cap 32). (Amended L.N. 88 of 1997)
- (c)-(d) (Repealed L.N. 88 of 1997)

(Added 49 of 1995 s. 52)
