
Banking (Amendment) Bill 2011

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A BILL

To

Amend the Banking Ordinance to empower the Monetary Authority to prescribe capital requirements for authorized institutions incorporated in Hong Kong and liquidity requirements for authorized institutions incorporated in Hong Kong or elsewhere; to broaden the functions of the Capital Adequacy Review Tribunal; to provide for related matters; and to make consequential amendments to that Ordinance and the Electronic Transactions Ordinance.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Banking (Amendment) Ordinance 2011.
 - (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.
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Part 2

Amendments to Banking Ordinance

2. Banking Ordinance amended

The Banking Ordinance (Cap. 155) is amended as set out in sections 3 to 19.

3. Section 2 amended (interpretation)

(1) Section 2(1), definition of *capital base*—

Repeal

“section 98A(1)” (wherever appearing)

Substitute

“section 97C(1)”.

(2) Section 2(1)—

Repeal the definition of *Review Tribunal*

Substitute

“*Review Tribunal* (覆核審裁處) means the Banking Review Tribunal established by section 101A;”.

(3) Section 2(1)—

Repeal the definition of *capital adequacy ratio*.

(4) Section 2(1)—

Repeal the definition of *liquidity ratio*.

(5) Section 2(1)—

Add in alphabetical order

“*Basel Committee* (巴塞爾委員會) means the Basel Committee on Banking Supervision, whose secretariat is hosted by the Bank for International Settlements in Basel, Switzerland, that seeks to promote sound standards of banking supervision worldwide;

capital requirement rule (資本規定規則) means a rule made under section 97C(1)(a);

liquidity requirement rule (流動資產規定規則) means a rule made under section 97H(1)(a);”.

4. Section 60A amended (disclosure to the general public of information relating to financial affairs)

(1) Section 60A(1)—

Repeal

“profit and loss or capital adequacy ratio”

Substitute

“including their profit and loss and their financial resources (including capital resources and liquidity resources),”.

(2) Section 60A—

Repeal subsection (3)

Substitute

“(3) Without limiting subsection (1), rules made under that subsection—

(a) may make different provisions for different classes of authorized institutions;

(b) may give effect to banking supervisory standards relating to disclosure issued by the Basel Committee, whether in whole or in part and subject to any modifications the Monetary Authority thinks fit, having regard to the prevailing circumstances in Hong Kong;

(c) may apply, adopt or incorporate by reference, with or without modifications, any document relating to disclosure issued by the Basel Committee, whether in whole or in part and whether in force at the time of issue or as in force from time to time;

(d) may provide for the Monetary Authority, on application made by an authorized institution aggrieved by a decision of the Monetary Authority made in relation to it under the rules, to review the decision; and

(e) may contain incidental, supplementary, consequential, transitional or savings provisions that may be necessary or expedient in consequence of the rules.

(3A) Rules made under subsection (1) may provide that a decision made by the Monetary Authority under the rules is a decision to which section 101B(1) applies.”.

5. Section 63 amended (returns and information to be submitted to the Monetary Authority)

(1) Section 63(3A)(a)(ii)—

Repeal

“XVII”

Substitute

“XVIA”.

(2) Section 63(3A)(a)(ii)—

Repeal

“XVIII”

Substitute

“XVIB”.

6. Section 79 amended (interpretation and application)

Section 79(2)—

Repeal

“section 98A(1)”

Substitute

“section 97C(1)”.

7. Section 81 amended (limitations on advances by authorized institutions)

Section 81(2)(c)(i)—

Repeal

“section 98A(1)”

Substitute

“section 97C(1)”.

8. Parts XVIA, XVIB and XVIC added

After Part XVI—

Add

“Part XVIA

Capital Requirements

97B. Purpose

The purpose of this Part is to ensure that authorized institutions incorporated in Hong Kong maintain adequate capital resources consistent with what is sound and prudent, taking into account the risks associated with the institutions.

97C. Capital requirements

- (1) The Monetary Authority may, after consultation with the Financial Secretary and the persons specified in subsection (2), make rules—

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- (a) prescribing capital requirements for authorized institutions incorporated in Hong Kong, taking into account the risks associated with the institutions; and
 - (b) for connected purposes.
- (2) The persons specified for the purposes of subsection (1) are—
- (a) the Banking Advisory Committee;
 - (b) the Deposit-taking Companies Advisory Committee;
 - (c) The Hong Kong Association of Banks; and
 - (d) The DTC Association.
- (3) Without limiting subsection (1), rules made under that subsection—
- (a) may make different provisions for different classes of authorized institutions incorporated in Hong Kong, taking into account the risks associated with the institutions belonging to each class;
 - (b) may give effect to banking supervisory standards relating to capital issued by the Basel Committee, whether in whole or in part and subject to any modifications the Monetary Authority thinks fit, having regard to the prevailing circumstances in Hong Kong;
 - (c) may apply, adopt or incorporate by reference, with or without modifications, any document relating to capital issued by the Basel Committee, whether in whole or in part and whether in force at the time of issue or as in force from time to time;

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- (d) may, in respect of an authorized institution that has one or more than one subsidiary, specify, or empower the Monetary Authority to specify, that any capital requirement rule applicable to the institution is to apply—
 - (i) to the institution on an unconsolidated basis;
 - (ii) to the institution and one or more of such subsidiaries on a consolidated basis; or
 - (iii) to the institution on an unconsolidated basis and to the institution and one or more of such subsidiaries on a consolidated basis;
 - (e) may provide that a matter prescribed in the rules (including a failure to comply with a capital requirement rule) relating to an authorized institution is a matter in respect of which the institution—
 - (i) must immediately notify the Monetary Authority; and
 - (ii) must provide particulars to the Monetary Authority on request;
 - (f) may provide for the Monetary Authority, on application made by an authorized institution aggrieved by a decision of the Monetary Authority made in relation to it under the rules, to review the decision;
 - (g) may prescribe a capital requirement in the form of a range with upper and lower limits, and the circumstances under which the Monetary Authority may determine a specific capital requirement within that range to apply to an authorized institution; and

- (h) may contain incidental, supplementary, consequential, transitional or savings provisions that may be necessary or expedient in consequence of the rules.
- (4) Rules made under subsection (1) may provide that a decision made by the Monetary Authority under the rules is a decision to which section 101B(1) applies.
- (5) Subject to this Part and Part X, an authorized institution incorporated in Hong Kong must comply with the rules made under subsection (1) applicable to it.
- (6) Rules made under section 98A(1) and in force immediately before the commencement date of section 9 of the Banking (Amendment) Ordinance 2011 (of 2011) are, on and after that date, deemed to have been made under subsection (1) and, accordingly, may be amended by rules made under that subsection.
- (7) To avoid doubt, any requirement under subsection (1) for the Monetary Authority to consult with any person does not operate to prevent the Monetary Authority from consulting with any other person that the Monetary Authority thinks fit.

97D. Prescribed notification requirement

- (1) In this section—
- prescribed notification requirement* (訂明通知規定) means a requirement prescribed in the rules made under section 97C(1) to the effect that an authorized institution must in respect of a matter prescribed in the rules immediately notify the Monetary Authority.
- (2) If, in compliance with a prescribed notification requirement, an authorized institution notifies the Monetary Authority of a failure to comply with a capital requirement rule relating to a minimum level of

capital to be maintained by the institution, the Monetary Authority must immediately notify the Financial Secretary and provide the Financial Secretary with any particulars of the failure that the Financial Secretary requires.

- (3) Every director, every chief executive and every manager of an authorized institution that fails to comply with a prescribed notification requirement applicable to it commits an offence and is liable on conviction on indictment to a fine at tier 8 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at tier 3 for every day during which the offence continues.

97E. Remedial action

- (1) If an authorized institution contravenes section 97C(5), the institution and the Monetary Authority must enter into discussions for the purposes of determining what remedial action should be taken by the institution to comply with that section, but the Monetary Authority is not bound by any such discussions.
- (2) The Monetary Authority may, after holding any discussions under subsection (1), by notice in writing served on the authorized institution, require the institution to take the remedial action specified in the notice.
- (3) A decision of the Monetary Authority to impose a requirement on an authorized institution in a notice served under subsection (2) is a decision to which section 101B(1) applies.
- (4) Every director, every chief executive and every manager of an authorized institution that fails to comply with any requirement imposed in a notice served under subsection (2) commits an offence and is

liable on conviction on indictment to a fine at tier 8 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at tier 3 for every day during which the offence continues.

- (5) To avoid doubt, the imposition of a requirement on an authorized institution under this section does not affect any action taken, or prevent any action from being taken, in respect of the institution by the Monetary Authority under the rules made under section 97C(1).

97F. Monetary Authority may vary capital requirement rules for particular authorized institutions

- (1) Subject to subsections (2), (3), (4) and (5), the Monetary Authority may, by notice in writing served on an authorized institution, vary any capital requirement rule applicable to the institution if the Monetary Authority is satisfied, on reasonable grounds, that it is prudent to make the variation, taking into account the risks associated with the institution.
- (2) If the Monetary Authority proposes to serve a notice under subsection (1) on an authorized institution, the Monetary Authority must serve a draft of the notice (*draft notice*) on the institution.
- (3) A draft notice served on an authorized institution must—
 - (a) specify—
 - (i) the capital requirement rule proposed to be varied;
 - (ii) the manner in which the capital requirement rule concerned is proposed to be varied; and
 - (iii) the grounds for the proposed variation; and

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- (b) include a statement that the institution may, within 14 days (or any longer period the Monetary Authority allows in any particular case) from the date of service of the draft notice, make written representations to the Monetary Authority on any or all of the matters specified in the draft notice under paragraph (a)(i), (ii) and (iii).
- (4) If representations are made in accordance with subsection (3)(b) on a draft notice served on an authorized institution, the Monetary Authority may, after considering the representations—
- (a) serve a notice on the institution under subsection (1) in substantially the same terms as the draft notice;
 - (b) serve a notice on the institution under subsection (1) in terms modified to take account of any one or more of those representations that satisfies the Monetary Authority that the modification concerned ought to be made; or
 - (c) elect not to serve a notice on the institution under subsection (1) because one or more of those representations satisfies the Monetary Authority that the Monetary Authority should neither take the action mentioned in paragraph (a) nor take the action mentioned in paragraph (b).
- (5) If no representations are made in accordance with subsection (3)(b) on a draft notice served on an authorized institution, the Monetary Authority may serve a notice on the institution under subsection (1) in substantially the same terms as the draft notice.
- (6) If any capital requirement rule applicable to an authorized institution is varied under this section, this Part (including rules made under section 97C(1)) applies, in relation to that institution, with all

necessary modifications, to take account of the capital requirement rule so varied.

- (7) A decision of the Monetary Authority to vary any capital requirement rule under subsection (1) is a decision to which section 101B(1) applies.
- (8) To avoid doubt—
 - (a) the Monetary Authority may serve a draft notice on an authorized institution in substitution for an earlier draft notice served on the institution; and
 - (b) the reference to “substantially the same terms as the draft notice” in subsection (4)(a) or (5) is not to be construed to include the statement mentioned in subsection (3)(b) required to be included in a draft notice.

Part XVIB

Liquidity Requirements

97G. Purpose

The purpose of this Part is to ensure that authorized institutions maintain adequate liquidity resources consistent with what is sound and prudent, taking into account the liquidity risks associated with the institutions.

97H. Liquidity requirements

- (1) The Monetary Authority may, after consultation with the Financial Secretary and the persons specified in subsection (2), make rules—
 - (a) prescribing liquidity requirements for authorized institutions, taking into account the liquidity risks associated with the institutions; and

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- (b) for connected purposes.
- (2) The persons specified for the purposes of subsection (1) are—
- (a) the Banking Advisory Committee;
 - (b) the Deposit-taking Companies Advisory Committee;
 - (c) The Hong Kong Association of Banks; and
 - (d) The DTC Association.
- (3) Without limiting subsection (1), rules made under that subsection—
- (a) may make different provisions for different classes of authorized institutions, taking into account the liquidity risks associated with the institutions belonging to each class;
 - (b) may give effect to banking supervisory standards relating to liquidity issued by the Basel Committee, whether in whole or in part and subject to any modifications the Monetary Authority thinks fit, having regard to the prevailing circumstances in Hong Kong;
 - (c) may apply, adopt or incorporate by reference, with or without modifications, any document relating to liquidity issued by the Basel Committee, whether in whole or in part and whether in force at the time of issue or as in force from time to time;
 - (d) may, in respect of an authorized institution incorporated in Hong Kong, specify, or empower the Monetary Authority to specify, that any liquidity requirement rule applicable to the institution is to apply on the basis that the business of the institution includes all or any part of its business in or outside Hong Kong;

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- (e) may, in respect of an authorized institution incorporated in Hong Kong that has one or more than one associated entity within the meaning of subsection (4), specify, or empower the Monetary Authority to specify, that any liquidity requirement rule applicable to the institution is to apply—
 - (i) to the institution on an unconsolidated basis;
 - (ii) to the institution and one or more of such entities on a consolidated basis; or
 - (iii) to the institution on an unconsolidated basis and to the institution and one or more of such entities on a consolidated basis;
 - (f) may, in respect of an authorized institution incorporated outside Hong Kong, specify, or empower the Monetary Authority to specify, that any liquidity requirement rule applicable to the institution is to apply only to the business of the institution in Hong Kong;
 - (g) may provide that a matter prescribed in the rules (including a failure to comply with a liquidity requirement rule) relating to an authorized institution is a matter in respect of which the institution—
 - (i) must immediately notify the Monetary Authority; and
 - (ii) must provide particulars to the Monetary Authority on request;
 - (h) may provide for the Monetary Authority, on application made by an authorized institution aggrieved by a decision of the Monetary Authority made in relation to it under the rules, to review the decision;

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- (i) may prescribe a liquidity requirement in the form of a range with upper and lower limits, and the circumstances under which the Monetary Authority may determine a specific liquidity requirement within that range to apply to an authorized institution; and
 - (j) may contain incidental, supplementary, consequential, transitional or savings provisions that may be necessary or expedient in consequence of the rules.
- (4) For the purposes of subsection (3)(e)—
- (a) an incorporated entity is an associated entity of an authorized institution if—
 - (i) the entity is a subsidiary of the institution;
 - (ii) the institution is entitled to exercise, or control the exercise of, 20% or more, but not more than 50%, of the voting power at any general meeting of the entity; or
 - (iii) the institution has significant influence over the entity's conduct of affairs (including the power to participate, whether directly or indirectly, in the entity's financial and operating policy decisions); and
 - (b) an unincorporated entity is an associated entity of an authorized institution if the institution has significant influence over the entity's conduct of affairs (including the power to participate, whether directly or indirectly, in the entity's financial and operating policy decisions).
- (5) Rules made under subsection (1) may provide that a decision made by the Monetary Authority under the rules is a decision to which section 101B(1) applies.

- (6) Subject to this Part and Part X, an authorized institution must comply with the rules made under subsection (1) applicable to it.
- (7) To avoid doubt, any requirement under subsection (1) for the Monetary Authority to consult with any person does not operate to prevent the Monetary Authority from consulting with any other person that the Monetary Authority thinks fit.

97I. Prescribed notification requirement

- (1) In this section—

prescribed notification requirement (訂明通知規定) means a requirement prescribed in the rules made under section 97H(1) to the effect that an authorized institution must in respect of a matter prescribed in the rules immediately notify the Monetary Authority.

- (2) If, in compliance with a prescribed notification requirement, an authorized institution notifies the Monetary Authority of a failure to comply with a liquidity requirement rule relating to a minimum level of liquidity to be maintained by the institution, the Monetary Authority must immediately notify the Financial Secretary and provide the Financial Secretary with any particulars of the failure that the Financial Secretary requires.
- (3) Every director, every chief executive and every manager of an authorized institution that fails to comply with a prescribed notification requirement applicable to it commits an offence and is liable on conviction on indictment to a fine at tier 8 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at tier 3 for every day during which the offence continues.

97J. Remedial action

- (1) If an authorized institution contravenes section 97H(6), the institution and the Monetary Authority must enter into discussions for the purposes of determining what remedial action should be taken by the institution to comply with that section, but the Monetary Authority is not bound by any such discussions.
- (2) The Monetary Authority may, after holding any discussions under subsection (1), by notice in writing served on the authorized institution, require the institution to take the remedial action specified in the notice.
- (3) A decision of the Monetary Authority to impose a requirement on an authorized institution in a notice served under subsection (2) is a decision to which section 101B(1) applies.
- (4) Every director, every chief executive and every manager of an authorized institution that fails to comply with any requirement imposed in a notice served under subsection (2) commits an offence and is liable on conviction on indictment to a fine at tier 8 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at tier 3 for every day during which the offence continues.
- (5) To avoid doubt, the imposition of a requirement on an authorized institution under this section does not affect any action taken, or prevent any action from being taken, in respect of the institution by the Monetary Authority under the rules made under section 97H(1).

97K. Monetary Authority may vary liquidity requirement rules for particular authorized institutions

- (1) Subject to subsections (2), (3), (4) and (5), the Monetary Authority may, by notice in writing served on an authorized institution, vary any liquidity requirement rule applicable to the institution if the Monetary Authority is satisfied, on reasonable grounds, that it is prudent to make the variation, taking into account the liquidity risks associated with the institution.
- (2) If the Monetary Authority proposes to serve a notice under subsection (1) on an authorized institution, the Monetary Authority must serve a draft of the notice (*draft notice*) on the institution.
- (3) A draft notice served on an authorized institution must—
 - (a) specify—
 - (i) the liquidity requirement rule proposed to be varied;
 - (ii) the manner in which the liquidity requirement rule concerned is proposed to be varied; and
 - (iii) the grounds for the proposed variation; and
 - (b) include a statement that the institution may, within 14 days (or any longer period the Monetary Authority allows in any particular case) from the date of service of the draft notice, make written representations to the Monetary Authority on any or all of the matters specified in the draft notice under paragraph (a)(i), (ii) and (iii).
- (4) If representations are made in accordance with subsection (3)(b) on a draft notice served on an authorized institution, the Monetary Authority may, after considering the representations—

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- (a) serve a notice on the institution under subsection (1) in substantially the same terms as the draft notice;
 - (b) serve a notice on the institution under subsection (1) in terms modified to take account of any one or more of those representations that satisfies the Monetary Authority that the modification concerned ought to be made; or
 - (c) elect not to serve a notice on the institution under subsection (1) because one or more of those representations satisfies the Monetary Authority that the Monetary Authority should neither take the action mentioned in paragraph (a) nor take the action mentioned in paragraph (b).
- (5) If no representations are made in accordance with subsection (3)(b) on a draft notice served on an authorized institution, the Monetary Authority may serve a notice on the institution under subsection (1) in substantially the same terms as the draft notice.
- (6) If any liquidity requirement rule applicable to an authorized institution is varied under this section, this Part (including rules made under section 97H(1)) applies, in relation to that institution, with all necessary modifications, to take account of the liquidity requirement rule so varied.
- (7) A decision of the Monetary Authority to vary any liquidity requirement rule under subsection (1) is a decision to which section 101B(1) applies.
- (8) To avoid doubt—
- (a) the Monetary Authority may serve a draft notice on an authorized institution in substitution for an earlier draft notice served on the institution; and

- (b) the reference to “substantially the same terms as the draft notice” in subsection (4)(a) or (5) is not to be construed to include the statement mentioned in subsection (3)(b) required to be included in a draft notice.

Part XVIC

Codes of Practice for Rules Made under Section 60A(1), 97C(1) or 97H(1)

97L. Interpretation of Part XVIC

- (1) In this Part—

code of practice (實務守則) includes—

- (a) part of a code; and
- (b) technical memoranda and standards, whether or not in the form of formulae, tables or graphs;

relevant provisions (相關條文) means any of the provisions of any rules made under section 60A(1), 97C(1) or 97H(1).

- (2) References in this Part to an approved code of practice include references to that code as it has effect for the time being by virtue of any amendment of the whole or any part of it approved under section 97M.

97M. Codes of practice

- (1) For the purposes of providing guidance in respect of any relevant provisions, the Monetary Authority may, after consultation with the persons specified in subsection (2)—

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- (a) approve and issue any codes of practice (whether prepared by the Monetary Authority or not) that the Monetary Authority considers appropriate; or
 - (b) approve any codes of practice issued or proposed to be issued otherwise than by the Monetary Authority that the Monetary Authority considers appropriate.
 - (2) The persons specified for the purposes of subsection (1) are—
 - (a) the Banking Advisory Committee;
 - (b) the Deposit-taking Companies Advisory Committee;
 - (c) The Hong Kong Association of Banks; and
 - (d) The DTC Association.
 - (3) If a code of practice is approved under subsection (1), the Monetary Authority must, by notice published in the Gazette—
 - (a) identify the code concerned and specify the date on which the Monetary Authority's approval of the code is to take effect; and
 - (b) specify the relevant provisions for which the code is approved.
 - (4) The Monetary Authority may—
 - (a) amend an approved code of practice prepared by the Monetary Authority under this section; and
 - (b) approve any amendment or proposed amendment of an approved code of practice,and, in any such case, subsections (1), (2) and (3) apply, with all necessary modifications, in relation to the approval of any amendment of the code as they apply in relation to the approval of a code of practice under subsection (1).

- (5) The Monetary Authority may, after consultation with the persons specified in subsection (2), by notice published in the Gazette, withdraw the Monetary Authority's approval of any code of practice.
- (6) The Monetary Authority must, in a notice under subsection (5), identify the code of practice to which the notice relates and specify the date on which the Monetary Authority's approval of the code is withdrawn.
- (7) A document purporting to be a code of practice approved under this section or, if such a code has been amended under this section, purporting to be the code as so amended, certified by or under the authority of the Monetary Authority to be the code, or the code as so amended, as the case may be, as in force on the date specified in the certification is admissible in evidence in any proceedings before the Review Tribunal on its production without further proof and, until the contrary is proved, it is to be presumed, in those proceedings, that—
 - (a) the signature and certification is that of the Monetary Authority or a person authorized by the Monetary Authority for the purpose; and
 - (b) the document is the code, or the code as so amended, as the case may be, as in force on the date specified in the certification.
- (8) To avoid doubt, any requirement under subsection (1) for the Monetary Authority to consult with any person does not operate to prevent the Monetary Authority from consulting with any other person that the Monetary Authority thinks fit.

97N. Use of approved codes of practice in proceedings before Review Tribunal

- (1) In this section—

prescribed requirement (訂明規定) means any relevant provisions that impose a requirement on—

- (a) each authorized institution; or
 - (b) each authorized institution that belongs to a class of authorized institution.
- (2) A failure on the part of an authorized institution to observe any provision of an approved code of practice that applies to the institution does not of itself render the institution liable to any civil or criminal proceedings but if, in any proceedings before the Review Tribunal, a contravention of a prescribed requirement is alleged to have occurred or to be occurring in respect of which requirement there was such a code of practice in force at the time of the alleged occurrence, subsection (3) has effect in respect of such code for the purpose of the proceedings.
- (3) If in proceedings before the Review Tribunal it is proved that there was at any material time a failure to observe any provision of an approved code of practice that appears to the Tribunal to be relevant to any matter that it is necessary for the Monetary Authority to prove in order to establish a contravention of a prescribed requirement, that matter is to be taken as proved unless the Tribunal is satisfied that the requirement was in respect of that matter complied with otherwise than by way of observance of that provision.”.

9. Part XVII repealed (capital adequacy ratio of authorized institutions)

Part XVII—

Repeal the Part.

10. Part XVIIIA heading amended (Capital Adequacy Review Tribunal)

Part XVIIIA, heading—

Repeal

“CAPITAL ADEQUACY”

Substitute

“BANKING”.

11. Section 101A amended (establishment of Capital Adequacy Review Tribunal)

(1) Section 101A, heading—

Repeal

“Capital Adequacy”

Substitute

“Banking”.

(2) Section 101A(1)—

Repeal

“Capital Adequacy”

Substitute

“Banking”.

(3) Section 101A(1)—

Repeal

“資本充足事宜”

Substitute

“銀行業”.

(4) After section 101A(6)—

Add

“(6A) References to “Capital Adequacy Review Tribunal” or “資本充足事宜覆核審裁處” in any instrument, contract or proceedings for a review that is or are in effect or pending immediately before the commencement date of section 11 of the Banking (Amendment) Ordinance 2011 (of 2011) are, on and after that date, to be construed as references to “Banking Review Tribunal” or “銀行業覆核審裁處”.”.

12. Section 101B amended (application to Review Tribunal)

Section 101B(1)—

Repeal

“section 98A(4)”

Substitute

“section 60A(3A), 97C(4), 97E(3), 97F(7), 97H(5), 97J(3) or 97K(7)”.

13. Part XVIII repealed (liquidity ratio of authorized institutions and matters affecting liquidity ratio)

Part XVIII—

Repeal the Part.

14. Section 119A added

After section 119—

Add

“119A. Authorized institutions not to create certain charges and to notify Monetary Authority of certain civil or criminal proceedings

(1) In this section—

assets (資產) includes assets outside Hong Kong;

charge (押記) includes lien, encumbrance, equitable interest and third party right;

value (價值) has the meaning given by section 79(1).

- (2) Subject to subsection (3), an authorized institution incorporated in Hong Kong must not, except with the approval of the Monetary Authority, which approval may be subject to any conditions the Monetary Authority thinks fit, by whatever means create any charge over its assets if either—
 - (a) the aggregate value of all charges existing over its total assets (excluding contra items) is 5% or more of the value of those total assets; or
 - (b) creating that charge would cause the aggregate value of all charges (including that first-mentioned charge) over its total assets (excluding contra items) to be more than 5% of the value of those total assets.
- (3) The Monetary Authority may, by notice published in the Gazette, specify a charge, or a class of charge, to which subsection (2) does not apply.
- (4) If any civil or criminal proceedings have been instituted against any authorized institution incorporated in Hong Kong, irrespective of whether the proceedings have been instituted before, on or after the commencement date of this section, the institution must, if those proceedings materially affect, or could materially affect, the financial position of the institution, immediately notify the Monetary Authority of those proceedings and provide the Monetary Authority with any particulars of those proceedings the Monetary Authority requires.
- (5) Every director, every chief executive and every manager of an authorized institution that contravenes subsection (2) or (4) commits an offence and is liable—

- (a) on conviction on 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.
- (6) A notice made under section 106(2) and in force immediately before the commencement date of section 14 of the Banking (Amendment) Ordinance 2011 (of 2011) is, on and after that date, deemed to have been made under subsection (3) and, accordingly, may be amended by a notice made under that subsection.”.

15. Section 132A amended (appeals)

- (1) Section 132A(1)(fb)—

Repeal

“section 97(1);”

Substitute

“section 97(1),”.

- (2) Section 132A(1)—

Repeal paragraph (g).

- (3) Section 132A(1)—

Repeal paragraph (h).

16. Section 135 amended (power to amend Schedules)

- Section 135(3)—

Repeal

“Fourth,”.

17. Fourth Schedule repealed (liquidity ratio)

Fourth Schedule—

Repeal the Schedule.

18. Seventh Schedule amended (minimum criteria for authorization)

(1) Seventh Schedule, section 6(d)—

Repeal

“have and maintain a capital adequacy ratio which complies with the provisions of Part XVII applicable to it”

Substitute

“comply with the rules made under section 97C(1) applicable to it”.

(2) Seventh Schedule, section 7(b)—

Repeal

“have and maintain a liquidity ratio which complies with the provisions of Part XVIII applicable to it”

Substitute

“comply with the rules made under section 97H(1) applicable to it”.

(3) Seventh Schedule, section 11(a)—

Repeal

“its profit and loss and its capital adequacy ratio”

Substitute

“including its profit and loss and its financial resources (including capital resources and liquidity resources)”.

19. Fifteenth Schedule amended (provisions relating to Capital Adequacy Review Tribunal)

Fifteenth Schedule, heading—

Banking (Amendment) Bill 2011

Part 2
Clause 19

C4691

Repeal

“CAPITAL ADEQUACY”

Substitute

“BANKING”.

Part 3

Amendment to Electronic Transactions Ordinance

20. Electronic Transactions Ordinance amended

The Electronic Transactions Ordinance (Cap. 553) is amended as set out in section 21.

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

Schedule 2, paragraph (zq)—

Repeal

“Capital Adequacy”

Substitute

“Banking”.

Explanatory Memorandum

The main object of this Bill is to amend the Banking Ordinance (Cap. 155) (*principal Ordinance*) for the purposes of enabling rules to be made to give effect to the banking supervisory standards known as Basel III, issued in December 2010 by the Basel Committee on Banking Supervision (see the definition of *Basel Committee* proposed to be added in section 2(1) of the principal Ordinance by clause 3(5)), in so far as those requirements relate to the capital resources and liquidity resources of authorized institutions.

2. Clauses 9 and 13 repeal Part XVII (Capital Adequacy Ratio of Authorized Institutions) and Part XVIII (Liquidity Ratio of Authorized Institutions and Matters Affecting Liquidity Ratio) respectively of the principal Ordinance. Clause 8 adds new Part XVIA (Capital Requirements), new Part XVIB (Liquidity Requirements) and new Part XVIC (Codes of Practice for Rules Made under Section 60A(1), 97C(1) or 97H(1)).
3. New Part XVIA empowers the Monetary Authority to make rules to prescribe capital requirements for authorized institutions incorporated in Hong Kong.
4. Further to paragraph 3 above, the Monetary Authority will have the power to vary any capital requirement rule applicable to a particular authorized institution if the Monetary Authority is of the opinion that it is prudent to do so taking into account the risks associated with the institution (new section 97F).
5. New Part XVIB empowers the Monetary Authority to make rules to prescribe liquidity requirements for authorized institutions incorporated in Hong Kong or elsewhere.

6. Further to paragraph 5 above, the Monetary Authority will have the power to vary any liquidity requirement rule applicable to a particular authorized institution if the Monetary Authority is of the opinion that it is prudent to do so taking into account the liquidity risks associated with the institution (new section 97K).
7. New Part XVIC empowers the Monetary Authority to issue codes of practice for the purpose of providing guidance in respect of the provisions of certain rules made under the principal Ordinance (see the definition of *relevant provisions* proposed to be added in section 97L(1) of the principal Ordinance).
8. Clause 12 amends section 101B of the principal Ordinance to give the Capital Adequacy Review Tribunal (as presently named) a wider review remit in view of new Parts XVIA and XVIB proposed to be added to the principal Ordinance by clause 8. Clause 11 amends section 101A of the principal Ordinance to rename the Capital Adequacy Review Tribunal as the Banking Review Tribunal in view of its extended review functions.
9. Clause 14 adds new section 119A to the principal Ordinance. New section 119A replicates section 106 of the principal Ordinance with the modification that the new section applies to criminal proceedings in addition to civil proceedings.
10. Clauses 3 to 7, 10 and 15 to 19 make related and consequential amendments to the principal Ordinance. Clause 21 makes a consequential amendment to the Electronic Transactions Ordinance (Cap. 553).