

LEGISLATIVE COUNCIL BRIEF

The Secretary for Financial Services and the Treasury submits the following note for Members' information:

<u>Title of the Note</u>	<u>Date of ExCo</u>	<u>Date of Gazette</u>
Banking Ordinance (Chapter 155) – Banking (Amendment) Bill 2011	6 December 2011	9 December 2011

8 December 2011

Financial Services and the Treasury Bureau

LEGISLATIVE COUNCIL BRIEF

BANKING ORDINANCE (CHAPTER 155)

BANKING (AMENDMENT) BILL 2011

INTRODUCTION

At the meeting of the Executive Council on 6 December 2011, the Council **ADVISED** and the Chief Executive **ORDERED** that, the Banking (Amendment) Bill 2011 (the Bill), at **Annex A**, should be introduced into the Legislative Council (LegCo) to provide for the implementation of Basel III in Hong Kong.

JUSTIFICATIONS

Basel III

2. In December 2010, the BCBS issued two documents (namely, “Basel III: A global regulatory framework for more resilient banks and banking systems”¹, and “Basel III: International framework for liquidity risk measurement, standards and monitoring”) to set out the Basel III reform package for strengthening the global capital and liquidity requirements for banks. Through Basel III, the BCBS aims to improve the banking sector’s ability to absorb shocks arising from financial and economic stress, thus reducing the risk of spill-over from the financial sector to the real economy.

3. Basel III was endorsed by the leaders of the G20 at the Seoul Summit held in November 2010. The G20 Finance Ministers and Central Bank Governors met in Paris in February 2011 and committed to fully implementing Basel III in line with the agreed timelines (please refer to paragraph 5 for details). As a major international financial centre and a member of the BCBS, it is important that Hong Kong commits to adopting Basel III. Its implementation will ensure that the capital and liquidity frameworks for

¹ A few subsequent refinements have been made to the framework by the BCBS during 2011.

authorized institutions² (AIs) in Hong Kong are consistent with international standards and that AIs will not be disadvantaged vis-à-vis their peers overseas.

4. The main elements of Basel III include -

(a) Strengthening the global capital framework

The global capital framework sets out minimum levels of capital which banks are required to maintain in relation to their risk exposures.

(i) Basel III enhances the quality of the regulatory capital base by:

(A) tightening the qualifying criteria for instruments to be included in a bank's regulatory capital; and

(B) harmonising regulatory deductions from the capital base and, in most cases, applying these to the common equity component of the capital base.

(ii) Basel III increases the minimum regulatory capital requirements (expressed as a percentage of banks' risk-weighted assets³) such that:

(A) the **Common Equity** component of the capital base must be at least 4.5%;

(B) the **Tier 1 Capital**⁴ must be at least 6%; and

(C) the **Total Capital** must be at least 8% (this is the same as the current requirement).

(iii) Basel III improves the transparency of the capital base by requiring all elements of capital to be disclosed along with a detailed reconciliation to the reported accounts.

² Licensed banks, restricted licence banks and deposit-taking companies authorized under the BO.

³ Risk-weighted assets are a measure of a bank's assets adjusted for risk.

⁴ Tier 1 capital is a core measure of a bank's financial strength from a regulator's point of view. It is composed of common equity and retained earnings together with other loss absorbing instruments which meet criteria for inclusion specified by the BCBS. Tier 2 capital is secondary or supplementary bank capital which includes a range of instruments (e.g. subordinated term debt), which are more restricted in their capacity for loss absorption and which meet the criteria for inclusion specified by the BCBS.

(b) Reducing procyclicality

(i) Basel III creates two buffers of capital above the regulatory minimum which banks can use during periods of stress:

(A) the **Capital Conservation Buffer**, which is 2.5% of risk-weighted assets; and

(B) the **Countercyclical Capital Buffer**, which is an extension of the capital conservation buffer, ranging from 0% in normal times up to 2.5% of risk-weighted assets during periods of excessive credit growth associated with the build-up of system-wide risk.

Restraints will be imposed on distributions by a bank when its capital level falls into the buffer range.

(c) Supplementing the risk-based capital requirements with a leverage ratio

(i) Basel III introduces a simple **Leverage Ratio**, which is a ratio of Tier 1 capital to a bank's total exposures. Tentatively set at 3%, the Leverage Ratio is designed to constrain the build-up of excessive leverage within the banking sector and provide an additional safeguard against model risk and measurement error in the risk-based capital adequacy calculation.

(d) Enhancing risk coverage

(i) Basel III strengthens the capital requirements for certain counterparty credit risk exposures of banks through, amongst other things, the imposition of capital charges for mark-to-market losses, and the use of stressed inputs in the capital calculation.

(e) Introducing two minimum standards for funding liquidity

(i) the **Liquidity Coverage Ratio**: this requires that a bank hold a stock of high-quality liquid assets that can be converted into cash to cover at least 100% of the bank's total net cash outflows over a period of 30 calendar days in times of stress; and

(ii) the **Net Stable Funding Ratio**: this requires that the amount of stable funding available to a bank must be more than 100% of its

required amount of stable funding over a one-year horizon under conditions of extended stress.

5. The BCBS has specified a set of transitional arrangements with a view to ensuring that the banking sector globally can meet the higher capital and liquidity standards through reasonable earnings retention, capital or fund raising, and other balance sheet adjustments, while continuing to support economic activities through lending and other banking business. Implementation of the new standards will begin on 1 January 2013, with the requirements being phased in over the following six years to achieve full implementation by 1 January 2019⁵. Details are set out at **Annex B**.

Existing legislative approach

6. Currently in Hong Kong, locally incorporated AIs are required to maintain a minimum capital adequacy ratio (CAR) of 8%⁶ and all AIs are required to maintain a minimum liquidity ratio of 25%. The existing regulatory capital adequacy and liquidity frameworks are set out in -

- (a) Part XVII and Part XVIIA of the Banking Ordinance (BO), which respectively prescribe the CAR requirements for locally-incorporated AIs and establish an appeal mechanism (i.e. the Capital Adequacy Review Tribunal) in respect of certain specified decisions of the Monetary Authority (MA) relating to the CAR calculation;
- (b) Part XVIII of, and the Fourth Schedule to, the BO, which respectively prescribe the liquidity ratio requirements for all AIs and the detailed calculation methodology; and
- (c) the Banking (Capital) Rules (Cap. 155L) (B(C)R) and the Banking (Disclosure) Rules (Cap. 155M) (B(D)R) made by the MA under sections 98A and 60A of the BO respectively. The B(C)R prescribe how the CAR is to be calculated, while the B(D)R prescribe what information on state of affairs, profit and loss, and CAR is to be publicly disclosed by AIs. These rules are supplemented by supervisory guidance issued by the MA.

⁵ The Basel III framework however provides that non-common equity capital instruments issued before 1 January 2013 that meet certain specified conditions are allowed to be phased out over a ten-year period continuing until 2023.

⁶ The calculation of CAR broadly reflects the Basel II regulatory framework with effect from 2007, modified to reflect the circumstances of the Hong Kong banking sector.

Legislative approach to be adopted for implementing Basel III

7. The strengthened capital requirements under Basel III not only supersede, but are broader and more technically complex than, the existing capital requirements set out in Part XVII of the BO. Instead of a single minimum total CAR ratio, Basel III introduces three risk-weighted minimum capital ratios, two capital buffers and a leverage ratio as mentioned in paragraph 4 above. Moreover, the liquidity requirements under Basel III are totally new international standards involving concepts that are substantially different from the relatively simple liquidity ratio currently set out in Part XVIII of the BO. All these new requirements are technically more complex than the existing regulatory requirements. With experience gained from the recent global financial crisis, there is international consensus for bank regulators to be empowered to amend regulatory standards relatively swiftly and proactively to address changing business practices and environments. This argues for removing the minimum capital and liquidity ratios from the main body of the primary legislation (i.e. the BO) and using subsidiary legislation (i.e. issuing rules which are subject to negative vetting by LegCo) as a more flexible instrument to introduce the Basel III requirements into Hong Kong. The new rules can be supplemented by supervisory guidance issued by the MA.

8. In view of the above, we propose to amend the BO to provide the MA with the power to make rules⁷ prescribing minimum capital⁸ and liquidity requirements for AIs. Similar to the existing checks and balances for the making of the B(C)R, such rules will only be made by the MA after consultation with the Financial Secretary, the Banking Advisory Committee (BAC), the Deposit-taking Companies Advisory Committee (DTCAC), The Hong Kong Association of Banks (HKAB) and The DTC Association (The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies) (DTCA). The rules will set out the minimum ratios, buffer threshold levels and the calculation formulae for the various standards under Basel III and, as mentioned above, will be subsidiary legislation subject to negative vetting by LegCo.

Appeal arrangements

9. Under the BO at present, if the MA varies a capital/liquidity

⁷ This will supersede section 98A of the BO (i.e. the power of the MA to make rules to prescribe the manner in which the existing capital adequacy ratio of AIs shall be calculated) and rules made under section 98A of the BO that are currently in force will be deemed to be made under the proposed power.

⁸ The minimum capital standards will include the risk based minimum ratios, the non-risk based Leverage Ratio and the two capital buffers.

requirement applicable to an AI, or issues a notice requiring remedial action by an AI where the AI has failed to maintain the minimum required capital/liquidity level, the AI may, pursuant to section 132A of the BO, appeal to the Chief Executive in Council. As noted in paragraph 6(a) above, a Capital Adequacy Review Tribunal has been established under the BO to review certain decisions by the MA relating to the approaches adopted for the CAR calculation, where such decisions are specified by the MA in the B(C)R as being subject to appeal to the Tribunal. At present, the Tribunal is chaired by a person qualified for appointment as a judge who sits with at least two independent persons with expertise in the relevant area. As the Basel III capital and liquidity requirements are more complex and technical than their predecessors, there is a case for broadening the scope of the Tribunal and for designating it, rather than the Chief Executive in Council, as the forum to hear appeals against decisions by the MA to vary capital or liquidity requirements for AIs, or to require remedial actions by AIs when they have failed to comply with the capital or liquidity requirements applicable to them. On this basis, we propose to repeal subsection (1)(g) and (h) of section 132A (Appeals) of the BO and rename the Tribunal the “Banking Review Tribunal”.

10. As mentioned above, an AI which is aggrieved by a specified decision of the MA relating to CAR calculation approaches under the existing B(C)R may appeal against the decision to the Capital Adequacy Review Tribunal. We consider that an equivalent appeal mechanism should also be made available for specified decisions of the MA made under the B(D)R and the proposed new rules for liquidity standards. We therefore propose to amend the BO to make the specified decisions made by the MA under the rules referred to in paragraph 8 reviewable by the proposed Banking Review Tribunal.

11. In considering the amendments to be proposed to Part XVIII of the BO dealing with liquidity, we have reviewed section 106 (AIs not to create certain charges and to notify MA of certain civil proceedings) of Part XVIII and consider it desirable to move this provision to Part XXI (Miscellaneous) of the BO as it relates to matters other than liquidity ratios. We also consider that section 106 should apply to criminal proceedings, in addition to civil proceedings, as criminal proceedings can also materially affect an AI’s financial situation if they result in substantial fines and/or reputational damage. Hence, we propose to relocate section 106 to Part XXI, with amendments to require an AI to notify the MA of any criminal proceedings instituted against it if the criminal proceedings materially affect, or could materially affect, its financial position.

OTHER OPTIONS

12. The implementation of Basel III in Hong Kong requires legislative changes in order to provide the necessary legal backing for the new regulatory standards. Other than amending the BO, the other potential option would be to introduce a sui generis ordinance on banks' capital and liquidity requirements. However, there seems to be no good reason to go this far and, in any event, in order to avoid overlap and interpretational difficulties, there would, even if this option were adopted, still be a need to amend the BO. Given this, we believe that amending the BO is the preferred option for implementing Basel III.

THE BILL

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

- (a) **Clause 4** amends section 60A (Disclosure to general public of information relating to financial affairs) of the BO in order to bring this section into alignment with what is proposed in Clause 8 of the Bill;
- (b) **Clause 8** adds:
 - (i) a new Part XVIA (Capital requirements) (i.e. sections 97B to 97F) in order that –
 - (A) the MA will have power to make rules under the new Part to prescribe capital requirements for AIs incorporated in Hong Kong (which will include the three new minimum risk-weighted capital ratios, the Leverage Ratio and the capital buffers mentioned above) to replace the CAR for AIs incorporated in Hong Kong presently set out in Part XVII;
 - (B) the rules made under the new Part may give effect to banking supervisory standards relating to capital issued by the BCBS (whether in whole or in part and subject to such modifications as the MA thinks fit);
 - (C) the rules made under the new Part may specify matters (which may be a failure to comply with a particular capital requirement rule) that an AI needs to report to the MA (i.e. a modified version of the existing section 99(1) of the BO);

- (D) the Financial Secretary will be notified of a failure by an AI to comply with a capital requirement rule which relates to a minimum level of capital to be maintained by the AI (i.e. a modified version of the existing section 99(2) of the BO);
 - (E) the rules made under the new Part may specify a capital requirement in the form of a range and prescribe the circumstances under which the MA may determine that a capital requirement within that range is to be applicable to an AI incorporated in Hong Kong. This enabling provision is intended to encompass any Basel capital requirements that could vary from time to time within a specified range (e.g. the countercyclical capital buffer referred to in paragraph 4(b)(i)(B) above which can range from 0% in normal times up to 2.5% in times of excessive credit growth);
 - (F) where an AI fails to comply with the rules made under the new Part that apply to it, the MA can, by notice in writing served on the AI, require the AI to take such remedial action as is specified in the notice for the purpose of having the AI comply with the rules (i.e. a modified and extended version of the existing sections 100(1) and (2) of the BO);
 - (G) the MA will have power to vary a capital requirement rule, by notice in writing served on an AI, where he is satisfied, on reasonable grounds, that it is prudent to make the variation taking into account the risks associated with the AI. To provide a proper check and balance, the MA will be required to first serve a draft of that notice on the AI so that the AI can make written representations to the MA (i.e. a substantially modified version of the existing section 101 of the BO); and
 - (H) an AI aggrieved by a decision of the MA, which is specified in rules made under the new Part as being subject to appeal to the Banking Review Tribunal, or aggrieved by a decision of the MA to serve on it a notice referred to in paragraph (F) or paragraph (G) above, may appeal against the decision to the Banking Review Tribunal;
- (ii) a new Part XVIB (Liquidity requirements) (i.e. sections 97G to 97K) which replaces Part XVIII (Liquidity ratio of AIs and

matters affecting liquidity ratio) and contains provisions that are the mirror image of the provisions in the new Part XVIA, but modified to relate to liquidity requirements and that apply to all AIs rather than only to AIs incorporated in Hong Kong (as is the case for capital requirements);

- (iii) a new Part XVIC (Code of practice for rules made under section 60A(1), 97C(1) or 97H(1)) (i.e. sections 97L to 97N) containing provisions which –
 - (A) empower the MA to approve codes of practice for the purpose of providing guidance in respect of any of the provisions of rules made under section 60A(1) of the BO, or of any of the provisions of rules made under section 97C(1) in the new Part XVIA or section 97H(1) in the new Part XVIB; and
 - (B) provide for some recognition of approved codes of practice (in terms of evidential value) in proceedings before the Banking Review Tribunal;
- (c) **Clause 9** repeals Part XVII (CAR of AIs) of the BO as that Part is superseded by the provisions in the new Part XVIA;
- (d) **Clause 12** amends section 101B (Application to Review Tribunal) of the BO to take account of the wider review remit that the Capital Adequacy Review Tribunal is proposed to be given under the amended section 60A, new Part XVIA and new Part XVIB, and **Clause 11** renames the Tribunal as the “Banking Review Tribunal” in view of that wider review remit;
- (e) **Clause 13** repeals Part XVIII (Liquidity ratio of AIs and matters affecting liquidity ratio) of the BO as that Part is superseded by the provisions of new Part XVIB;
- (f) **Clause 14** adds a new section 119A to Part XXI (Miscellaneous) of the BO. The new section reproduces section 106 (AIs not to create certain charges and to notify MA of certain civil proceedings) of the BO, which is repealed by Clause 13, with modifications so that it requires an AI to notify the MA of any criminal proceedings (i.e. in addition to civil proceedings) instituted against it if the criminal proceedings materially affect, or could materially affect, the financial position of the AI;

- (g) **Clause 17** repeals the Fourth Schedule (Liquidity Ratio) to the BO which prescribes the calculation methodology and technical details relating to the existing liquidity ratio, as the calculation methodology and technical details relating to the two new Basel III liquidity ratios will be set out in the rules to be made by the MA under the new Part XVIB and in codes of practice approved by the MA under the new Part XVIC; and
- (h) **Clauses 3, 5 to 7, 10, 15, 16, 18, 19 and 21** contain related and consequential amendments.

LEGISLATIVE TIMETABLE

14. The legislative timetable will be as follows –

Publication in the Gazette	9 December 2011
First Reading and commencement of Second Reading debate	21 December 2011
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSALS

15. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. It has no financial, civil service, productivity, environmental or sustainability implications. The amendments proposed in the Bill will not affect the current binding effect of the BO.

16. The economic implications are set out at **Annex C**.

PUBLIC CONSULTATION

17. On 26 January 2011, the Hong Kong Monetary Authority issued a circular letter to all AIs indicating its initial thinking on the implementation of Basel III in Hong Kong (including the anticipated timetable) in order to provide a backdrop against which AIs could begin to develop plans for bringing their

organisations into compliance with the Basel III requirements.

18. The MA consulted the HKAB and the DTCA on the major provisions of the Bill in October 2011. The DTCA has not raised any comments on the Bill. The HKAB is generally supportive of the approach proposed in the Bill to vest in the MA enhanced rule-making powers to specify capital and liquidity requirements. The comments raised by the HKAB were mainly to clarify the underlying policy intentions of the MA relating to the application of certain provisions of the Bill, and, in a few cases, the relationship of the provisions with international regulatory norms. The industry associations will again be consulted when the rules setting out the capital and liquidity requirements are prepared.

19. In addition, we briefed the LegCo Panel on Financial Affairs on the implementation of Basel III on 9 June 2011. Members did not raise any particular adverse comments. There were, however, a few questions on the related issue of the inadequacy of Basel II to meet the challenges of the recent crisis; and on the potential financial impacts of the introduction of Basel III on business development and competitiveness and on AIs (including their profitability) as well as their customers. The consequences for Hong Kong if it failed to implement Basel III were also raised. In response, we emphasised the need to implement Basel III to modify the identified deficiencies in the existing Basel II framework; the need to balance increases in AIs' operating costs against enhancing their resilience to weather any future crisis; the fact that a host of factors (not just Basel requirements) were taken into account in pricing loans and financial products (including market competition); and the risk of Hong Kong being seen as a non-compliant jurisdiction if it failed to implement Basel III, thereby jeopardising its continued participation in the relevant international standard-setting bodies including the BCBS.

PUBLICITY

20. We will issue a press release upon the gazettal of the Bill. The MA will also issue a circular letter to all AIs in this regard. In addition, a government spokesperson will be available to answer media and public enquiries.

BACKGROUND

Basel I

21. The BCBS is an international standard-setting body which promotes sound standards of banking supervision globally. A key element of its work is the development of the supervisory framework governing the capital adequacy of internationally active banks. Basel I refers to the Basel Capital Accord introduced by the BCBS in 1988. One of its key elements was the CAR, which was calculated by dividing a bank's capital base by its risk-weighted assets (arrived at by multiplying each asset class by the specified risk weight). The minimum CAR under Basel I was 8%.

22. Basel I and its subsequent amendments were adopted and implemented in Hong Kong through Part XVII of the BO (with the detailed calculation methodologies set out in the Third Schedule). The Third Schedule was supplemented by supervisory guidelines and technical notes issued by the MA.

Existing Basel II capital adequacy framework

23. In order to address the limitations of Basel I, the BCBS issued in June 2004 a New Basel Capital Accord (known as "Basel II") to replace Basel I, followed by further refinements released in November 2005. The BCBS expected Basel II to be implemented globally with effect from 1 January 2007.

24. Basel II is composed of three pillars, namely (i) minimum capital requirements for a bank's credit, market and operational risks ("Pillar 1"); (ii) supervisory review process to evaluate and monitor the bank's capital adequacy in relation to its overall risk profile ("Pillar 2"); and (iii) disclosure requirements to allow market participants to access key pieces of information on the bank's capital adequacy ("Pillar 3").

25. Hong Kong implemented Basel II on 1 January 2007 through the enactment of the Banking (Amendment) Bill 2005. This enabled the MA to promulgate rules prescribing (i) the manner in which AIs' CAR shall be calculated (thereby superseding the Third Schedule to the BO); and (ii) the information on financial affairs that AIs shall disclose. These rules (i.e. the B(C)R and B(D)R enacted on 1 January 2007) are subsidiary legislation subject to negative vetting by LegCo. The MA's power to make rules is subject to the

statutory duty to consult the BAC, the DTCAC, the HKAB, the DTCA, and the Financial Secretary.

Basel II Enhancements and Basel III

26. In July 2009, the BCBS issued a set of enhancements to the Basel II framework (dubbed “Basel 2.5”) to strengthen its risk coverage in the light of lessons drawn from the global financial crisis. The main improvements include raising banks’ capital requirements for exposures booked in banks’ trading books and for securitization exposures, providing supplemental guidance on risk management principles and strengthening disclosure in corresponding areas. The implementation of relevant enhancements under Basel 2.5 requires amendments to the B(C)R as well as B(D)R and the amendment rules were tabled at LegCo for negative vetting on 26 October 2011. The amendment rules will take effect on 1 January 2012, in line with the BCBS implementation timetable.

27. Following the release of Basel 2.5, the BCBS continued in its objective of strengthening the global capital framework and the resilience of the banking sector. To this end, the BCBS issued the Basel III requirements as mentioned above.

ENQUIRIES

28. For any enquiries relating to the Brief, please contact Miss Natalie Li, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) at 2810 2067, or Mr Richard Chu, Head of Banking Policy, Hong Kong Monetary Authority, at 2878 8276.

**Financial Services Branch
Financial Services and the Treasury Bureau
8 December 2011**

BANKING ORDINANCE (CHAPTER 155)
BANKING (AMENDMENT) BILL 2011: ANNEXES

- Annex A – Banking (Amendment) Bill 2011
- Annex B – Phase-in arrangements for Basel III implementation
- Annex C – Economic Implications
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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.

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—
 - (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;
 - (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
 - (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
 - (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;
 - (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;
 - (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—
 - (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)—
 - (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 XVIII heading amended (Capital Adequacy Review Tribunal)**

Part XVIII, 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—
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).

Annex B

Phase-in arrangements for Basel III implementation

(shading indicates transition periods, all dates are as of 1 January)

	2011	2012	2013	2014	2015	2016	2017	2018	2019
Common Equity Tier 1 Capital			3.5%	4.0%	4.5%				
Tier 1 Capital			4.5%	5.5%	6.0%				
Total Capital			8.0%						
Capital Conservation Buffer						0.625%	1.25%	1.875%	2.5%
Countercyclical Buffer						0% to 0.625%	0% to 1.25%	0% to 1.875%	0% to 2.5%
Leverage Ratio	Supervisory monitoring		Parallel run (Disclosure starts on 1 Jan 2015)				Migrate to Pillar 1		
Capital instruments that no longer qualify as non-common Tier 1 or Tier 2 capital	Phased out over 10 years from 2013								
Liquidity Coverage Ratio	Observation period				Introduce min. standard				
Net Stable Funding Ratio	Observation period							Introduce min. standard	

Economic Implications

The proposed amendments to the Banking Ordinance are required for the implementation of Basel III, which will bring the regulatory capital and liquidity frameworks of Hong Kong into line with international standards, and is thus important to Hong Kong both as an international financial centre and a member of the international regulatory standard-setting bodies including the Basel Committee on Banking Supervision. Moreover, the implementation of Basel III should make the banking system in Hong Kong more resilient, thereby contributing to the robustness and competitiveness of Hong Kong's financial markets and economy.

LIST OF ABBREVIATIONS

AIs	-	authorized institutions
BAC	-	Banking Advisory Committee
BCBS	-	Basel Committee on Banking Supervision
B(C)R	-	Banking (Capital) Rules (Cap. 155L)
B(D)R	-	Banking (Disclosure) Rules (Cap. 155M)
BO	-	Banking Ordinance
CAR	-	capital adequacy ratio
DTCA	-	The DTC Association (The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies)
DTCAC	-	Deposit-taking Companies Advisory Committee
HKAB	-	The Hong Kong Association of Banks
LegCo	-	Legislative Council
MA	-	Monetary Authority