

## **LEGISLATIVE COUNCIL BRIEF**

Banking Ordinance (Cap. 155)

### **Banking (Amendment) Bill 2017**

#### **INTRODUCTION**

At the meeting of the Executive Council on 3 October 2017, the Council **ADVISED** and the Chief Executive **ORDERED** that, to strengthen the resilience of our banking system in accordance with the latest international standards on banking regulation, the Banking (Amendment) Bill 2017 (“the Bill”), at **Annex A**, should be introduced into the Legislative Council (“LegCo”) to –

- (a) empower the Monetary Authority (“MA”) to require an authorized institution<sup>1</sup> (“AI”) to maintain, revise or implement a recovery plan, which should set out the measures that the institution can take to stabilise and restore its financial resources and viability in the event that it comes under severe stress; and
- (b) change the limitations on financial exposures incurred by AIs and to empower the MA to make rules for such limitations.

#### **JUSTIFICATIONS**

##### **Recovery Planning**

2. The financial crises in recent years have pointed to the inadequacy of financial institutions in preparing for severe stress events. To address this vulnerability in the global financial system, the Financial

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<sup>1</sup> Authorized institutions refer to licensed banks, restricted licence banks, and deposit-taking companies authorized under the Banking Ordinance.

Stability Board (“FSB”)<sup>2</sup> issued in 2014 a set of standards relating to resolution planning and recovery planning<sup>3</sup> in its “Key Attributes of Effective Resolution Regimes for Financial Institutions” (“Key Attributes”). All member jurisdictions of the FSB, including Hong Kong, are expected to implement these standards to ensure that financial institutions are sufficiently prepared to respond to risk events.

3. The Key Attributes require jurisdictions to put in place an ongoing process for resolution and recovery planning covering, at a minimum, financial institutions that could be systemically important or critical if they fail. Insofar as recovery planning is concerned, supervisory authorities should ensure that financial institutions maintain a recovery plan that identifies options to restore financial strength and viability when they come under severe stress. The relevant authorities should also have the requisite powers to mandate the implementation of recovery measures.

4. In Hong Kong, the Financial Institutions (Resolution) Ordinance (Cap. 628) was enacted in June 2016 and came into effect in July 2017 to meet the broader regulatory standards stipulated in the Key Attributes, including the requirements for resolution planning. In respect of recovery planning, the MA has to date relied on the information gathering power under the Banking Ordinance (“the Ordinance”) to require AIs to prepare recovery plans.

5. To provide greater transparency and certainty, it is considered necessary to prescribe explicit recovery planning requirements in the Ordinance. This will ensure compliance with the relevant FSB standards and, more importantly, the resilience of our banking system to cope with severe stress.

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<sup>2</sup> The FSB is an international body established by the G20 leaders in 2009. It is tasked to assess vulnerabilities in the global financial system and propose actions to address them.

<sup>3</sup> The basic difference between recovery planning and resolution planning is that the former is a going concern prudential requirement designed to avoid institution failure, whereas the latter is to ensure that institutions which are no longer a going concern can be allowed to fail in an orderly manner. Recovery plans should set out a full menu of recovery options, identify and explain how an AI will monitor the need to trigger the recovery options, and identify the key steps and milestones in implementing the recovery options.

## **Financial Exposure Limits**

6. The Basel Committee on Banking Supervision (“BCBS”), of which Hong Kong is a member, is the international body that sets standards on banking regulation with a view to enhancing financial stability. Following the BCBS’s release of a new supervisory framework for measuring and controlling large exposures in April 2014, it is incumbent upon Hong Kong to bring our regulatory regime up-to-date in accordance with the latest international standards.

7. Under the Ordinance, AIs are subject to a set of restrictions on the financial exposures that they may incur which seek to prevent their exposures from becoming overly concentrated in certain aspects and hence risk-prone. Part XV of the Ordinance stipulates restrictions on, inter alia, advances made by AIs against the security of its own shares or against the shares of its subsidiaries and related companies; limits on exposures of AIs to certain assets and counterparties, as well as other limitations on shareholding and acquisition of share capital in companies by AIs. The current exposure limitations follow the standards promulgated by the BCBS in 1991. Compared with the 1991 standards, the new large exposures framework is more elaborate in terms of the scope of limitation and provides more detailed, methodical guidance in relation to the calculation of exposures.<sup>4</sup>

8. Implementing the new large exposures framework requires amendments to the Ordinance to remove obsolete provisions and institute replacement rules. In view of the technical nature of the new framework, and that such regulatory requirements need to be updated from time to time to reflect changes in international standards, we consider it more effective to confer a general power on the MA so that he can make rules to prescribe limits on exposures incurred by AIs. Once empowered, the MA will make the necessary rules to implement the new large exposures framework and replace the obsolete provisions in Part XV of the Ordinance.

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<sup>4</sup> For example, it prescribes the treatment of certain specific types of exposures, such as interbank exposures, exposures to sovereigns and their central banks, etc., so as to reduce the discrepancy of treatment among banks. It also provides a more stringent measurement of exposures by specifying that AIs should use its Tier 1 capital instead of total capital as the capital base for calculating the exposures limits.

9. The above approach of relegating the more technical regulatory requirements to rules made by the MA is in line with that adopted in the past for implementing the BCBS capital, disclosure and liquidity standards.<sup>5</sup> It has the merit of sparing the main legislation from being overloaded with technical and yet complex details, while enabling the MA to implement new standards locally in a more timely fashion.

## **LEGISLATIVE PROPOSAL**

### **Recovery Planning**

10. To implement the FSB requirements on recovery planning, we propose that a new part be inserted into the Ordinance to provide for recovery planning by AIs in the manner outlined in the ensuing paragraphs.<sup>6</sup>

11. First, the MA may require an AI to prepare, maintain and submit a recovery plan to the MA containing a range of recovery options which could be deployed by the AI's management to stabilise and restore the financial resources and the viability of the AI in the event that it comes under severe stress. The MA may specify the form and standards as well as elements to be included in the recovery plan, including a framework of recovery triggers designed to identify the points at which consideration must be given to the implementation of the plan.

12. Secondly, the MA would be given a general power so that he may impose requirements on the AI in relation to a recovery plan to ensure that the plan is fit for purpose. In imposing the requirements, the MA may take into account the nature, scale and complexity of the AI.

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<sup>5</sup> The Banking Ordinance was amended in 2005 and 2012 to empower the MA to make rules for the implementation of BCBS capital, disclosure and liquidity standards. Since 2012, the Banking (Capital) Rules (Cap. 155 sub. leg. L) and the Banking (Disclosure) Rules (Cap. 155 sub. leg. M) have been separately amended four times to incorporate the complex and technical updates in the international standards.

<sup>6</sup> The proposed approach of inserting a new Part to the Banking Ordinance in respect of recovery planning reflects the approach adopted in other jurisdictions, for example the European Union where the Bank Recovery and Resolution Directive contains specific provisions on recovery planning and early intervention measures.

13. Thirdly, if the MA identifies any deficiencies or impediments in the plan or measures in the plan, the MA may require the AI to revise the recovery plan to address the deficiencies or impediments.

14. Fourthly, if the MA considers that the AI is delaying the implementation of the recovery plan in a crisis, the MA may direct the AI to implement one or more measures in the recovery plan. To issue such a direction, the MA must first consider the failure by the AI to implement the recovery plan is detrimental to the viability of the AI. He must also consider implementation of the recovery plan necessary to stabilise and restore the financial resources and viability of the AI and to avoid unacceptable risk to Hong Kong's financial system. For this particular proposal, given the nature of the direction, an AI may make an application to the Banking Review Tribunal to review the decision of the MA.

15. Finally, the new part also contains notification requirements, whereby the AI must notify the MA of the occurrence (or likely occurrence) of any trigger events specified in its recovery plan or the decision to deploy a recovery action under its recovery plan as soon as practicable.

16. In addition to the above, the MA may also require a locally incorporated holding company of an AI to prepare and maintain a recovery plan.

### **Financial Exposure Limits**

17. To implement the BCBS's new large exposures framework and cater for future changes, we propose to confer a general power on the MA to make rules prescribing limits on exposures incurred by AIs. Such rules will be in the form of subsidiary legislation, the making of which is subject to negative vetting by LegCo and statutory consultation on the same basis and with the same bodies<sup>7</sup> as those applicable to the Banking (Capital) Rules (Cap. 155 sub. leg. L), the Banking (Disclosure) Rules (Cap. 155 sub. leg. M) and the Banking (Liquidity) Rules (Cap. 155 sub.

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<sup>7</sup> Including the Banking Advisory Committee, the Deposit-taking Companies Advisory Committee, The Hong Kong Association of Banks, The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies, and any other person as the MA thinks fit.

leg. Q).

18. The rules to be made by the MA will replace the relevant provisions in Part XV of the Ordinance for the purpose of implementing the new BCBS large exposures framework. The obsolete provisions will be repealed on the commencement date of the subsidiary legislation, to be appointed by the Secretary for Financial Services and the Treasury. A list of major provisions to be repealed and their replacement rules to be instituted in the subsidiary legislation is at **Annex B**.

### **Miscellaneous Amendments**

19. Other consequential amendments apart, we have taken the opportunity to repeal the Banking (Specification of Public Sector Entity in Hong Kong) Notice (Cap. 155 sub. leg. O), which is no longer required following the repeal of Schedule 4 to the Ordinance under the Banking (Amendment) Ordinance 2012.

### **THE BILL**

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

- (a) **Clause 4** makes the recovery planning amendments by adding a new Part XIIA to the Ordinance. The Part contains the following new sections –
  - (i) section 68A defines *recovery plan* for the new Part XIIA;
  - (ii) section 68B specifies the types of AIs to which the new Part XIIA applies;
  - (iii) section 68C empowers the MA, by notice in writing, to require an AI to prepare, maintain and submit a recovery plan;

- (iv) sections 68D, 68E, 68F and 68G empower the MA, in certain circumstances, to impose requirements on an AI in relation to its recovery plan to ensure that the plan is fit for the purpose, to require the institution to revise or implement the plan, and to require the institution to notify the MA of certain matters relating to the implementation of the plan;
  - (v) section 68H empowers the MA, in certain circumstances, to impose similar requirements in relation to a recovery plan on an AI's holding company that is locally incorporated; and
  - (vi) section 68I provides for the offences relating to non-compliance with a requirement under sections 68C to 68H;
- (b) **Clauses 7, 8 and 10 to 15** repeal the following provisions of the Ordinance upon the commencement of the exposure limitation rules made under the new sections added by **Clause 9** –
- (i) section 80 (advance against security of own shares, etc.);
  - (ii) section 81 (limitations on advances by authorized institutions);
  - (iii) section 83 (limitations on advances to directors, etc. of bank);
  - (iv) section 85 (limitation on advances to employees);
  - (v) section 87 (limitation on shareholding by authorized institutions);
  - (vi) section 87A (acquisition by authorized institutions incorporated in Hong Kong of share capital in

companies);

- (vii) section 88 (limitation on holding of interest in land by authorized institutions); and
  - (viii) section 90 (limitation on aggregate holdings under sections 83, 87 and 88);
- (c) **Clause 9** adds the following new sections to the Ordinance to empower the MA to make exposure limitation rules –
- (i) section 81A empowers the MA to make rules prescribing limits on the exposures incurred by AIs (“section 81A rules”);
  - (ii) section 81B empowers the MA to require an AI to take certain remedial actions if the AI fails to comply with the section 81A rules; and
  - (iii) section 81C provides for the offences relating to the section 81A rules and section 81B;
- (d) **Clauses 3, 5, 6, 16 to 18 and 20 to 26** make amendments to the Ordinance consequential to the exposure limitation amendments, including –
- (i) section 2(1) on the definitions of *local branch, capital base, recognized stock market and subsidiary*;
  - (ii) the heading of Part XV (limitations on loans by and interests of authorized institutions);
  - (iii) section 79 (interpretation and application);
  - (iv) section 91 (proof of compliance with section 80, 81, 83, 85, 86, 87, 88 or 90);
  - (v) the heading of Part XVIC (codes of practice for rules



made under section 60A(1), 97C(1) or 97H(1));

- (vi) section 97L (interpretation of Part XVIC);
  - (vii) section 119A (authorized institutions not to create certain charges and to notify Monetary Authority of certain civil or criminal proceedings);
  - (viii) section 132A (appeals);
  - (ix) section 148 (transitional provision in relation to certain letters of comfort);
  - (x) section 148A (transitional provisions in relation to section 87);
  - (xi) section 150 (transitional provisions in relation to amendments made by Banking (Amendment) (No. 2) Ordinance 1991);
  - (xii) Seventh Schedule (minimum criteria for authorization);  
and
  - (xiii) Fourteenth Schedule (affairs or business of authorized institutions specified for purposes of definition of *manager*);
- (e) **Clause 19** amends section 101B of the Ordinance (application to Review Tribunal) in consequence of the recovery planning amendments and exposure limitation amendments;
- (f) **Clauses 27 and 28** amend the Banking (Capital) Rules to add a signpost definition of *capital base* in consequence of the repeal of such definition by **Clause 3**;
- (g) **Clause 29** repeals the Banking (Specification of Public Sector Entity in Hong Kong) Notice (Cap. 155 sub. leg. O) in consequence of the repeal of the Fourth Schedule to the

Ordinance under the Banking (Amendment) Ordinance 2012;  
and

- (h) **Clause 30** repeals the Specification of Factors (Financial Exposure of Authorized Institution) Notice 2007 (Cap. 155 sub. leg. P) in consequence of the exposure limitation amendments.

## **LEGISLATIVE TIMETABLE**

21. The legislative timetable will be –

Publication in the Gazette	13 October 2017
First Reading and commencement of Second Reading debate	25 October 2017
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

## **IMPLICATIONS OF THE PROPOSALS**

22. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no financial, civil service, productivity, environmental, family, gender or sustainability implications other than those set out in the economic implications paragraph. The proposed amendments do not affect the binding effect of the Ordinance.

### **Economic Implications**

23. The proposals will facilitate the timely implementation of the latest international standards on banking regulation in Hong Kong, thereby enhancing the resilience of our banking system. This will add to the credibility of Hong Kong both as an international financial centre and a responsible member of the international standard-setting bodies including the BCBS and the FSB.

## **PUBLIC CONSULTATION**

24. We consulted the LegCo Panel on Financial Affairs on 16 March 2017 on the legislative proposals. Members did not raise any objections.

25. The MA consulted the banking industry on its proposals for the implementation of the new BCBS exposure limits framework and recovery planning requirements in March and September 2016 respectively. The feedback received was generally supportive.

26. A second round of industry consultation on the detailed provisions of the Bill was conducted in July 2017. Again the industry is broadly in support of the proposed amendments.

## **PUBLICITY**

27. We will issue a press release upon the gazettal of the Bill. A spokesperson will be available to answer media enquiries.

## **ENQUIRIES**

28. Enquiries relating to the brief can be directed to Ms Eureka Cheung, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2810 2067, or to the following officers of HKMA: (i) Mr. Eamonn White, Head (Resolution Office), at 2878 1839 for matters concerning recovery planning; and (ii) Ms Gillian Hui, Head (Banking Policy), at 2878 1629 for matters concerning financial exposure limits.

**Financial Services and the Treasury Bureau  
Hong Kong Monetary Authority  
11 October 2017**

**Banking (Amendment) Bill 2017**

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# A BILL

## To

Amend the Banking Ordinance to provide for recovery planning by authorized institutions; to change the limitations on authorized institutions' exposures and empower the Monetary Authority to make rules for such limitations; and to repeal 2 items of subsidiary legislation made under the 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 2017.
- (2) Subject to subsection (3), 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.
- (3) The following provisions come into operation on the day on which this Ordinance is published in the Gazette—
  - (a) this Part;
  - (b) sections 2, 3(3) and (5), 4 and 19(1);
  - (c) Division 1 of Part 4.

### Part 2

#### Amendments to Banking Ordinance

##### 2. Banking Ordinance amended

The Banking Ordinance (Cap. 155) is amended as set out in this Part.

##### 3. Section 2 amended (interpretation)

- (1) Section 2(1), definition of *local branch*, paragraphs (a)(i)(B) and (ii)(B) and (b)(ii)—

###### Repeal

“mentioned in section 81(2)”

###### Substitute

“as defined by subsection (1A)”.

- (2) Section 2(1)—

###### Repeal the definition of *capital base*.

- (3) Section 2(1)—

###### Repeal the definition of *holding company* and *subsidiary*.

- (4) Section 2(1)—

###### Repeal the definition of *recognized stock market*.

- (5) Section 2(1)—

###### Add in alphabetical order

“*holding company* (控權公司), in relation to a body corporate, has the meaning given by section 13 of the Companies Ordinance (Cap. 622);

*subsidiary* (附屬公司), in relation to a body corporate, has the meaning given by section 15 of the Companies Ordinance (Cap. 622);”.

(6) After section 2(1)—

**Add**

“(1A) In the definition of *local branch* in subsection (1)—

*financial exposure* (財務風險) means any of the following—

- (a) the extension of credit, for example, advances, loans and other credit facilities (including letters of credit);
- (b) the holding of shares and debentures;
- (c) the undertaking of off-balance sheet exposures specified in column 2 of Table 14 in section 118 of the Banking (Capital) Rules (Cap. 155 sub. leg. L).”.

**4. Part XIIA added**

After Part XII—

**Add**

**“Part XIIA**

**Recovery Planning**

**68A. Interpretation**

In this Part—

*recovery plan* (恢復計劃) means—

- (a) a plan required under section 68C(1); or
- (b) if the plan is revised under section 68E, the revised plan.

**68B. Application**

This Part applies to—

- (a) an authorized institution incorporated in Hong Kong; and
- (b) an authorized institution incorporated outside Hong Kong, which operates in Hong Kong through a branch.

**68C. Requirements to prepare, maintain and submit recovery plan**

- (1) The Monetary Authority may, by notice in writing served on an authorized institution, require the institution to—
  - (a) prepare and maintain a plan setting out the measures that the institution can take to stabilize and restore its financial resources and viability when the institution comes under severe stress; and
  - (b) submit (including periodically submit) the plan to the Monetary Authority.
- (2) The Monetary Authority may specify—
  - (a) the form of, and the standards applicable to, a recovery plan; and
  - (b) the elements to be included in the plan, and the way they are to be included.
- (3) Without limiting subsection (2), the Monetary Authority may specify that a recovery plan must include—
  - (a) a framework of recovery triggers designed to identify the points at which consideration must be given by the authorized institution to the timely implementation of the measures in the plan;

- (b) a range of material and feasible recovery options that could be implemented by the institution to stabilize and restore its financial resources and viability, including the maintaining of capital and liquidity at levels adequate for the nature, scale and complexity of the institution's operations;
- (c) a process for activating the plan by the institution, including—
  - (i) the process for identifying and reporting the occurrence of trigger events, and the responsibility for assessing the impact of the events; and
  - (ii) the process for deciding on the appropriate course of action; and
- (d) a communication plan to ensure timely communication when the recovery plan is activated and the measures in the plan are implemented.

**68D. General power to impose requirements**

- (1) The Monetary Authority may, by notice in writing served on an authorized institution, impose requirements on the institution in relation to its recovery plan.
- (2) Without limiting subsection (1), the requirements may relate to—
  - (a) the frequency of review of the recovery plan;
  - (b) the information to be maintained by the authorized institution, and the management information systems required, for the purposes of recovery planning; and

- (c) the governance arrangements within the institution for oversight of the recovery planning process and the process for activating the plan and implementing the measures in the plan.
- (3) The Monetary Authority must not impose the requirements unless the Monetary Authority considers the imposition necessary or expedient to ensure that the authorized institution's recovery plan is fit for the purpose of stabilizing and restoring its financial resources and viability when the institution comes under severe stress.
- (4) In imposing the requirements, the Monetary Authority may have regard to the nature, scale and complexity of the authorized institution's operations.

**68E. Requirement to revise recovery plan**

- (1) This section applies if the Monetary Authority considers that there is a deficiency or impediment in the recovery plan of an authorized institution, including, for example, in the measures in the plan.
- (2) The Monetary Authority may, by notice in writing served on the authorized institution—
  - (a) specify the deficiency or impediment in the institution's recovery plan, including, for example, in the measures in the plan; and
  - (b) require the institution to submit a revised recovery plan within the period specified in the notice demonstrating how the deficiency or impediment has been addressed.
- (3) If—



- (a) the authorized institution fails to comply with the requirement imposed in the notice; or
- (b) the Monetary Authority considers that the deficiency or impediment has not been adequately addressed by the revised recovery plan submitted by the institution,

the Monetary Authority may, by notice in writing served on the institution, require it to make specific revisions to the plan within the period specified in the notice.

- (4) The period specified under subsection (2)(b) or (3) must be reasonable in the circumstances.

**68F. Requirement to implement recovery plan**

- (1) This section applies if the Monetary Authority considers that—
  - (a) an authorized institution is delaying the implementation of one or more of the measures in its recovery plan;
  - (b) the delay is injurious to the financial soundness and viability of the institution; and
  - (c) the institution's implementation of the measure or measures is necessary to—
    - (i) stabilize and restore the financial resources and viability of the institution; and
    - (ii) avoid an unacceptable risk to the general stability and effective working of the financial system in Hong Kong.
- (2) The Monetary Authority may, by notice in writing served on the authorized institution—
  - (a) notify the institution that the Monetary Authority intends to require it to implement one or more of

the measures in its recovery plan as specified in the notice; and

- (b) give reasons why the Monetary Authority has the intention.
- (3) The authorized institution may, within the period specified in the notice, make representations in writing to the Monetary Authority as to why the Monetary Authority should not impose the requirement.
- (4) If the Monetary Authority decides to impose the requirement, the Monetary Authority must by notice in writing served on the authorized institution—
  - (a) notify the institution of the decision;
  - (b) give reasons for the decision; and
  - (c) require the institution to implement, within the period specified in the notice, the measure or measures in its recovery plan as specified in the notice.
- (5) The period specified under subsection (3) or (4)(c) must be reasonable in the circumstances.
- (6) A decision of the Monetary Authority to impose a requirement under subsection (4) is a decision to which section 101B(1) applies.

**68G. Requirement to notify**

- (1) If an event that requires an authorized institution to implement a measure in its recovery plan occurs or is likely to occur, the institution must—
  - (a) as soon as practicable after becoming aware of the matter, notify the Monetary Authority of the matter; and

- (b) as soon as practicable after being notified to do so, provide the Monetary Authority with any particulars of the matter that the Monetary Authority requires.
- (2) If the authorized institution decides to implement a measure in its recovery plan, the institution must—
  - (a) as soon as practicable after making the decision, notify the Monetary Authority of the matter; and
  - (b) as soon as practicable after being notified to do so, provide the Monetary Authority with any particulars of the matter that the Monetary Authority requires.

**68H. Holding company of authorized institution**

- (1) The Monetary Authority may exercise a power mentioned in sections 68C, 68D, 68E and 68F in relation to a holding company of an authorized institution if—
  - (a) the holding company is incorporated in Hong Kong by or under the Companies Ordinance (Cap. 622), a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance (Cap. 622), or any other Ordinance; and
  - (b) the Monetary Authority considers the exercise of the power necessary or expedient to promote—
    - (i) the financial soundness and viability of the institution; or
    - (ii) the general stability and effective working of the financial system in Hong Kong.
- (2) For the purposes of subsection (1), a reference to an authorized institution in section 68C, 68D, 68E or 68F is a reference to the holding company.

- (3) If an event that requires the holding company to implement a measure in its recovery plan occurs or is likely to occur, the company must—
  - (a) as soon as practicable after becoming aware of the matter, notify the Monetary Authority of the matter; and
  - (b) as soon as practicable after being notified to do so, provide the Monetary Authority with any particulars of the matter that the Monetary Authority requires.
- (4) If the holding company decides to implement a measure in its recovery plan, the company must—
  - (a) as soon as practicable after making the decision, notify the Monetary Authority of the matter; and
  - (b) as soon as practicable after being notified to do so, provide the Monetary Authority with any particulars of the matter that the Monetary Authority requires.

**68I. Offences relating to recovery planning**

- (1) If an authorized institution, without reasonable excuse, fails to comply with section 68G, or a requirement of a notice served under section 68C(1), 68D(1), 68E(3) or 68F(4)—
  - (a) the institution commits an offence and is liable—
    - (i) on conviction on indictment—to a fine at tier 9 and, in the case of a continuing offence, to a further fine at tier 5 for every day during which the offence continues; or
    - (ii) on summary conviction—to a fine at tier 5 and, in the case of a continuing offence, to a

- further fine at tier 2 for every day during which the offence continues; and
- (b) whether or not the institution is charged with or convicted of the offence, every director, every chief executive and every manager of the institution also commits the offence and is liable—
- (i) on conviction on indictment—to a fine at tier 9 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at tier 5 for every day during which the offence continues; or
- (ii) on summary conviction—to a fine at tier 5 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues.
- (2) If a holding company of an authorized institution, without reasonable excuse, fails to comply with section 68H(3) or (4), or a requirement of a notice served by the Monetary Authority in the exercise of the Monetary Authority's powers under section 68H(1)—
- (a) the company commits an offence and is liable—
- (i) on conviction on indictment—to a fine at tier 9 and, in the case of a continuing offence, to a further fine at tier 5 for every day during which the offence continues; or
- (ii) on summary conviction—to a fine at tier 5 and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues; and

- (b) whether or not the company is charged with or convicted of the offence, every officer of the company also commits the offence and is liable—
- (i) on conviction on indictment—to a fine at tier 9 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at tier 5 for every day during which the offence continues; or
- (ii) on summary conviction—to a fine at tier 5 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues.
- (3) In subsection (2)—
- officer* (高級人員), in relation to a holding company, means—
- (a) a director of the company;
- (b) the chief executive officer or a deputy chief executive officer of the company; or
- (c) a person who is employed by, or acts for or on behalf of or under an arrangement with, the company and is principally responsible, alone or jointly with others, for—
- (i) the management of part of the business of the company; or
- (ii) the performance of one or more of the control functions of the company.
- (4) In the definition of *officer* in subsection (3)—

*chief executive officer* (行政總裁) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628);

*control function* (監控職能) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628);

*deputy chief executive officer* (副行政總裁) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (Cap. 628).”.

**5. Part XV heading amended (limitations on loans by and interests of authorized institutions)**

Part XV, heading—

**Repeal**

“Loans by”

**Substitute**

“Exposures”.

**6. Section 79 amended (interpretation and application)**

(1) Section 79, heading—

**Repeal**

“Interpretation and application”

**Substitute**

“Limited application to authorized institutions incorporated outside Hong Kong”.

(2) Section 79—

**Repeal subsections (1), (2) and (3).**

(3) Section 79(4)—

**Repeal**

“80, 82, 85, 86”

**Substitute**

“82 and 86”.

(4) Section 79—

**Repeal subsection (5).**

**7. Section 80 repealed (advance against security of own shares, etc.)**

Section 80—

**Repeal the section.**

**8. Section 81 repealed (limitations on advances by authorized institutions)**

Section 81—

**Repeal the section.**

**9. Sections 81A, 81B and 81C added**

Before section 82—

**Add**

**“81A. Limitations on exposures and interests of authorized institutions**

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

(a) prescribing limits on the exposures incurred by an authorized institution, including—

(i) exposures to a counterparty or a group of counterparties;

- (ii) exposures to a party connected to the institution;
- (iii) exposures to an employee of the institution;
- (iv) exposures incurred against the security of—
  - (A) the institution's own shares; or
  - (B) other instruments issued by the institution that are capital in nature; and
- (v) exposures incurred against the security of shares, or other instruments that are capital in nature, issued by—
  - (A) a holding company or subsidiary of the institution; or
  - (B) any other subsidiary of a holding company of the institution;
- (b) prescribing limits on the exposures of an authorized institution to, or the holding by the institution of interests in, certain assets or classes of assets, including—
  - (i) direct or indirect exposures to the equity of any other company; and
  - (ii) the holding of interests in land (whether situated in or outside Hong Kong);
- (c) prescribing aggregate limits on any combination of exposures and holding of interests mentioned in paragraphs (a) and (b); and
- (d) 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), the rules may—
  - (a) make different provisions for different classes of authorized institutions, taking into account the risks associated with the institutions belonging to each class;
  - (b) give effect to banking supervisory standards relating to limits on banks' exposures or holding of interests 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) apply, adopt or incorporate by reference, with or without modifications, any document relating to limits on banks' exposures or holding of interests 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) in respect of an authorized institution incorporated in Hong Kong that has one or more subsidiaries—
    - specify, or empower the Monetary Authority to specify, that any provision of the rules 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) in respect of an authorized institution incorporated outside Hong Kong—specify, or empower the Monetary Authority to specify, that any provision of the rules applicable to the institution is to apply only to the business of the institution in Hong Kong;
- (f) provide that a matter prescribed in the rules relating to an authorized institution (including a failure to comply with any provision of the rules) 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;
- (g) 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;
- (h) prescribe upper and lower limits, and the circumstances in which the Monetary Authority may determine specific limits to apply to an authorized institution;
- (i) empower the Monetary Authority to consent, subject to any conditions the Monetary Authority thinks fit, to the incurring of specified exposures or the acquisition of specified interests generally or in a particular case or class of cases such that the exposures or interests need not be taken into account in calculating whether an authorized

- institution has reached any limit applicable to the institution under the rules;
  - (j) empower the Monetary Authority to vary, in accordance with any procedure set out in the rules and in circumstances set out in the rules, a limit applicable to an authorized institution; and
  - (k) contain incidental, supplementary, consequential, transitional or savings provisions that may be necessary or expedient in consequence of the rules.
- (4) The rules 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 must comply with any provision of the rules applicable to it.
  - (6) To avoid doubt, any requirement under subsection (1) for the Monetary Authority to consult with any person does not prevent the Monetary Authority from consulting with any other person that the Monetary Authority thinks fit.

**81B. Remedial action**

- (1) If an authorized institution contravenes section 81A(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 the section, but the Monetary Authority is not bound by the 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) 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 81A(1).

**81C. Offence of failing to comply with prescribed notification or remedial action requirements**

- (1) In this section—

*prescribed notification requirement* (訂明通知規定) means a requirement prescribed in the rules made under section 81A(1) to the effect that an authorized institution must in respect of a matter prescribed in the rules immediately notify the Monetary Authority;

*remedial action requirement* (補救行動規定) means a requirement imposed in a notice served under section 81B(2).

- (2) If an authorized institution fails to comply with a prescribed notification requirement or remedial action requirement—
- (a) the institution commits an offence and is liable—
- (i) on conviction on indictment—to a fine at tier 8 and, in the case of a continuing offence, to a further fine at tier 3 for every day during which the offence continues; or
- (ii) on summary conviction—to a fine at tier 5 and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues; and

- (b) whether or not the institution is charged with or convicted of the offence, every director, every chief executive and every manager of the institution also commits the offence and is liable—
- (i) 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; or
- (ii) on summary conviction—to a fine at tier 5 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine at tier 2 for every day during which the offence continues.”.

**10. Section 83 repealed (limitations on advances to directors, etc. of bank)**

Section 83—

**Repeal the section.**

**11. Section 85 repealed (limitation on advances to employees)**

Section 85—

**Repeal the section.**

**12. Section 87 repealed (limitation on shareholding by authorized institutions)**

Section 87—

**Repeal the section.**

**13. Section 87A repealed (acquisition by authorized institutions incorporated in Hong Kong of share capital in companies)**

Section 87A—

**Repeal the section.**

**14. Section 88 repealed (limitation on holding of interest in land by authorized institutions)**

Section 88—

**Repeal the section.**

**15. Section 90 repealed (limitation on aggregate holdings under sections 83, 87 and 88)**

Section 90—

**Repeal the section.**

**16. Section 91 amended (proof of compliance with section 80, 81, 83, 85, 86, 87, 88 or 90)**

(1) Section 91, heading—

**Repeal**

**“with section 80, 81, 83, 85, 86, 87, 88 or 90”.**

(2) Section 91(1)—

**Repeal**

**“any of the provisions of section 80, 81, 83, 85, 86, 87, 88 or 90 applicable to that institution.”**

**Substitute**

**“—**

**(a) any provision of the rules made under section 81A(1);**

(b) a remedial action requirement as defined by section 81C(1); or

(c) a requirement of a notice under section 86.”.

**17. Part XVIC heading amended (codes of practice for rules made under section 60A(1), 97C(1) or 97H(1))**

Part XVIC, heading, after “60A(1),”—

**Add**

**“81A(1),”.**

**18. Section 97L amended (interpretation of Part XVIC)**

Section 97L(1), definition of *relevant provisions*, after “60A(1),”—

**Add**

**“81A(1),”.**

**19. Section 101B amended (application to Review Tribunal)**

(1) Section 101B(1), after “60A(3A),”—

**Add**

**“68F(6),”.**

(2) Section 101B(1), before “97C(4),”—

**Add**

**“81A(4),”.**

**20. Section 119A amended (authorized institutions not to create certain charges and to notify Monetary Authority of certain civil or criminal proceedings)**

Section 119A(1)—

**Repeal the definition of *value***

**Substitute**



“*value* (價值) means—

- (a) in the case of shares in a company—the total of the current book value and the amount for the time being remaining unpaid on the shares; and
- (b) in any other case—the current book value.”.

**21. Section 132A amended (appeals)**

- (1) Section 132A(1)(a)—

**Repeal**

“, 87A(5)”.

- (2) Section 132A(1)(d)—

**Repeal**

“, 69(1) or 87A(2)(a)”

**Substitute**

“or 69(1)”.

- (3) Section 132A(1)(e)—

**Repeal**

“, 51A(2) or 87A(2)(a)”

**Substitute**

“or 51A(2)”.

- (4) Section 132A(1)(e)—

**Repeal**

“, 51A(4) or 87A(4)”

**Substitute**

“or 51A(4)”.

**22. Section 148 repealed (transitional provision in relation to certain letters of comfort)**

Section 148—

**Repeal the section.**

**23. Section 148A repealed (transitional provisions in relation to section 87)**

Section 148A—

**Repeal the section.**

**24. Section 150 amended (transitional provisions in relation to amendments made by Banking (Amendment) (No. 2) Ordinance 1991)**

Section 150—

**Repeal subsections (9) and (10).**

**25. Seventh Schedule amended (minimum criteria for authorization)**

Seventh Schedule, paragraph 8, after “Part XV”—

**Add**

“, and the provisions of the rules made under that Part.”.

**26. Fourteenth Schedule amended (affairs or business of authorized institutions specified for purposes of definition of *manager*)**

Fourteenth Schedule, section 1—

**Repeal the definition of *banking or other financial services***

**Substitute**

“*banking or other financial services* (銀行或其他財務服務) includes—

- (a) the taking of deposits;
  - (b) the provision of payment and remittance services;
  - (c) the issue of credit cards, debit cards or stored value facilities;
  - (d) the provision of facilities for the purchase or sale of foreign currencies, securities or other financial instruments;
  - (e) the provision of financial advice;
  - (f) the incurring of exposures in connection with—
    - (i) the extension of credit;
    - (ii) the provision of guarantees; or
    - (iii) the undertaking of other off-balance sheet exposures; and
  - (g) the entry into contracts of a financial nature;”.
- 

### Part 3

#### Amendment to Banking (Capital) Rules

##### 27. Banking (Capital) Rules amended

The Banking (Capital) Rules (Cap. 155 sub. leg. L) are amended as set out in this Part.

##### 28. Section 2 amended (interpretation)

Section 2(1)—

##### Add in alphabetical order

“*capital base* (資本基礎)—see section 36;”.

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**Part 4****Repeals****Division 1—Repeal of Banking (Specification of Public Sector Entity in Hong Kong) Notice****29. Banking (Specification of Public Sector Entity in Hong Kong) Notice repealed**

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

**Division 2—Repeal of Specification of Factors (Financial Exposure of Authorized Institution) Notice 2007****30. Specification of Factors (Financial Exposure of Authorized Institution) Notice 2007 repealed**

The Specification of Factors (Financial Exposure of Authorized Institution) Notice 2007 (Cap. 155 sub. leg. P) is repealed.

**Explanatory Memorandum**

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

- (a) to provide for recovery planning by authorized institutions (*recovery planning amendments*); and
  - (b) to change the limitations on authorized institutions' exposures and empower the Monetary Authority to make rules for such limitations (*exposure limitation amendments*).
2. The Bill also amends the Banking (Capital) Rules (Cap. 155 sub. leg. L) and repeals 2 items of subsidiary legislation made under the Ordinance.
  3. The Bill contains 4 Parts.

**Part 1—Preliminary**

4. Clause 1 sets out the short title and provides for commencement.

**Part 2—Amendments to Ordinance**

5. Clause 3 amends section 2(1) of the Ordinance (interpretation). In particular—
  - (a) the definition of *local branch* is amended—following the repeal of section 81(2) of the Ordinance, it will no longer be appropriate to keep the references to “financial exposure mentioned in section 81(2)” in the definition; a definition of *financial exposure* will be added to the new section 2(1A) of the Ordinance to provide for the meaning of the expression;
  - (b) the definition of *capital base* is repealed—following the repeal of sections 79(2), 81, 83, 87, 87A, 88, 90 and

- 150(10) of the Ordinance, the expression “capital base” will no longer be used; for the purpose of interpretation of the expression used in the Banking (Capital) Rules (Cap. 155 sub. leg. L) and the Banking (Disclosure) Rules (Cap. 155 sub. leg. M), a definition of *capital base* will be added to section 2(1) of the Banking (Capital) Rules (see Part 3);
- (c) the definition of *recognized stock market* is repealed— following the repeal of section 79(1) of the Ordinance, the expression “recognized stock market” will no longer be used; and
- (d) the definition of *subsidiary* (currently defined with *holding company*) is separated out so that the definition appears in alphabetical order.
6. Clause 4 makes the recovery planning amendments by adding a new Part XIIA (recovery planning) to the Ordinance. The Part contains the following provisions—
- (a) the new section 68A defines *recovery plan* for the new Part XIIA;
- (b) the new section 68B specifies the types of authorized institutions to which the new Part XIIA applies;
- (c) the new section 68C empowers the Monetary Authority to require an authorized institution to prepare, maintain and submit a recovery plan;
- (d) the new sections 68D, 68E, 68F and 68G empower the Monetary Authority, in certain circumstances, to impose requirements on an authorized institution in relation to its recovery plan to ensure that the plan is fit for the purpose; to require the institution to revise or implement the plan; and to require the institution to notify the Monetary Authority of certain matters relating to implementing the plan;

- (e) the new section 68H empowers the Monetary Authority, in certain circumstances, to impose similar requirements in relation to a recovery plan of an authorized institution’s holding company; and
- (f) the new section 68I provides for the offences relating to the new sections 68C, 68D, 68E, 68F, 68G and 68H.
7. Clauses 5 and 6 make amendments to the Ordinance consequential to the exposure limitation amendments, namely, amendments to—
- (a) the heading of Part XV (limitations on loans by and interests of authorized institutions); and
- (b) section 79 (interpretation and application).
8. Clauses 7 to 15 make the exposure limitation amendments.
9. Clauses 7 and 8 repeal the following provisions of the Ordinance—
- (a) section 80 (advance against security of own shares, etc.); and
- (b) section 81 (limitations on advances by authorized institutions).
10. Clause 9 adds the following provisions to the Ordinance—
- (a) the new section 81A empowers the Monetary Authority to make rules prescribing limits on the exposures incurred by authorized institutions (*section 81A rules*);
- (b) the new section 81B empowers the Monetary Authority to require an authorized institution to take certain remedial actions if the institution fails to comply with the section 81A rules; and
- (c) the new section 81C provides for the offences relating to the section 81A rules and the new section 81B.
11. Clauses 10 to 15 repeal the following provisions of the Ordinance—

- (a) section 83 (limitations on advances to directors, etc. of bank);
  - (b) section 85 (limitation on advances to employees);
  - (c) section 87 (limitation on shareholding by authorized institutions);
  - (d) section 87A (acquisition by authorized institutions incorporated in Hong Kong of share capital in companies);
  - (e) section 88 (limitation on holding of interest in land by authorized institutions); and
  - (f) section 90 (limitation on aggregate holdings under sections 83, 87 and 88).
12. Clauses 16 to 18 make amendments to the Ordinance consequential to the exposure limitation amendments, namely, amendments to—
- (a) section 91 (proof of compliance with section 80, 81, 83, 85, 86, 87, 88 or 90);
  - (b) the heading of Part XVIC (codes of practice for rules made under section 60A(1), 97C(1) or 97H(1)); and
  - (c) section 97L (interpretation of Part XVIC).
13. Clause 19 amends section 101B of the Ordinance (application to Review Tribunal) in consequence of the recovery planning amendments and exposure limitation amendments.
14. Clauses 20 to 26 make amendments to the Ordinance consequential to the exposure limitation amendments, namely—
- (a) an amendment to section 119A (authorized institutions not to create certain charges and to notify Monetary Authority of certain civil or criminal proceedings);
  - (b) amendments to section 132A (appeals);

- (c) the repeal of section 148 (transitional provision in relation to certain letters of comfort);
- (d) the repeal of section 148A (transitional provisions in relation to section 87);
- (e) an amendment to section 150 (transitional provisions in relation to amendments made by Banking (Amendment) (No. 2) Ordinance 1991);
- (f) an amendment to the Seventh Schedule (minimum criteria for authorization); and
- (g) an amendment to the Fourteenth Schedule (affairs or business of authorized institutions specified for purposes of definition of *manager*).

**Part 3—Amendment to Banking (Capital) Rules**

15. Clause 28 amends section 2(1) of the Banking (Capital) Rules (Cap. 155 sub. leg. L) (interpretation) to add a signpost definition of *capital base*. The meaning of the expression “capital base” is contained in section 36 of the Rules.

**Part 4—Repeals**

16. Clause 29 repeals the Banking (Specification of Public Sector Entity in Hong Kong) Notice (Cap. 155 sub. leg. O) in consequence of the repeal of the Fourth Schedule to the Ordinance under the Banking (Amendment) Ordinance 2012 (3 of 2012).
17. Clause 30 repeals the Specification of Factors (Financial Exposure of Authorized Institution) Notice 2007 (Cap. 155 sub. leg. P) in consequence of the exposure limitation amendments.

**Major Provisions on Financial Exposure Limits to be Repealed and Replaced by Subsidiary Legislation**

<b>Section</b>	<b>Existing provisions</b>	<b>Major proposed revisions</b>
80	An AI shall not grant certain types of credit facilities against its own shares or against the shares of its subsidiaries / sister companies / holding company.	<ul style="list-style-type: none"><li>• The scope of the restricted security will be extended to include other instruments that are capital in nature in addition to shares.</li></ul>
81	The financial exposure of an AI incorporated in Hong Kong to a counterparty or a group of linked counterparties must not exceed an amount equivalent to 25% of the AI's total capital.	<ul style="list-style-type: none"><li>• The calculation of exposure measures, including treatment of certain types of exposure that are currently exempted, will be specified.</li><li>• Certain credit risk mitigation techniques applied to the exposure (e.g. exposure secured by a cash deposit) will then be recognised to reduce a relevant exposure for the purpose of determining compliance with the large exposure limits.</li><li>• The limits in the form of a ratio will be rebased from a percentage of total capital to Tier 1 capital.</li></ul>

83	An AI incorporated in Hong Kong shall not provide any specified unsecured facilities to any specified person, such as directors of the AIs, to a certain percentage of the AI's capital base.	<ul style="list-style-type: none"> <li>• The scope of the limitation will be extended from specified unsecured facilities to the types of financial exposures in line with the new large exposures framework.</li> <li>• The limits in the form of a ratio will be rebased from a percentage of total capital to Tier 1 capital.</li> <li>• The level of the limits will be subject to review to keep pace with market development.</li> </ul>
85	An AI incorporated in Hong Kong shall not provide any specified facility to an aggregate amount in excess of one year's salary for the employee.	<ul style="list-style-type: none"> <li>• The provision will be migrated to the new rules.</li> </ul>
87	An AI incorporated in Hong Kong shall not acquire or hold any part of the share capital of any other company to an aggregate value exceeding 25% of its capital base.	<ul style="list-style-type: none"> <li>• The scope of the restricted securities will be extended to include a wider range of equity exposures other than shares, for instance equity derivative contracts.</li> <li>• The limit in the form of a ratio will be rebased from a percentage of total capital to Tier 1 capital.</li> </ul>
87A	An AI incorporated in Hong Kong shall not acquire share	<ul style="list-style-type: none"> <li>• The limits in the form of a ratio will be rebased from a</li> </ul>

	capital of a company to a value of 5% of more of its capital base at the time of the acquisition.	percentage of total capital to Tier 1 capital.
88	An AI incorporated in Hong Kong shall not purchase or hold any interest in land of an aggregate value exceeding 25% of its capital base.	
90	The aggregate value of the holdings specified in sections 83, 87 and 88 of the BO shall not exceed 80% of the AI's capital base.	