

Banking (Amendment) Ordinance 2018

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 6 OF 2018



Matthew CHEUNG Kin-chung
Acting Chief Executive
1 February 2018

An Ordinance 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.

[2 February 2018]

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Banking (Amendment) Ordinance 2018.
- (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 XIII added

After Part XII—

Add

“Part XIII

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

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- (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

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- (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;

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- (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—

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- (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;”.
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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;”.

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.