Financial Institutions (Resolution) Ordinance

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 23 OF 2016

L.S.

C. Y. LEUNG
Chief Executive
29 June 2016

An Ordinance to establish a regime for the orderly resolution of financial institutions with a view to avoiding or mitigating the risks otherwise posed by their non-viability to the stability and effective working of the financial system of Hong Kong, including to the continued performance of critical financial functions; for that purpose to confer powers on the Insurance Authority, the Monetary Authority and the Securities and Futures Commission; to make consequential and related amendments to certain enactments; and to provide for incidental and related matters.

[ ]

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

(1) This Ordinance may be cited as the Financial Institutions (Resolution) Ordinance.

(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.

2. Interpretation

(1) In this Ordinance—

act (作為) includes a series of acts;

Additional Tier 1 capital instrument (額外一級資本票據) means a capital instrument issued by an authorized institution that meets the qualifying criteria set out in Schedule 4B to the Banking (Capital) Rules (Cap. 155 sub. leg. L), including the requirement that the terms and conditions of the instrument contain a point of non-viability provision;

affected entity (受影響實體) means any of the following in respect of which a Part 5 instrument is made under this Ordinance—

(a) a within scope financial institution;

(b) a holding company of a within scope financial institution;

(c) an affiliated operational entity of a within scope financial institution;

affiliated operational entity (相聯營運實體), in relation to a within scope financial institution, means a body corporate that—

(a) is a group company of the financial institution; and

(b) provides services, directly or indirectly, to the financial institution;

appeal tribunal (上訴審裁處) means—

(a) the Resolution Compensation Tribunal; or

(b) the Resolvability Review Tribunal;

appointing person (委任人)—see section 95(1);

asset management vehicle (資產管理工具)—see section 51;

assets (資產) means any legal or equitable estate or interest (whether present or future, vested or contingent or personal or assignable) in real or personal property of any description and includes money, securities, choses in action and documents;

authorized institution (認可機構) has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155);

authorized institution incorporated in Hong Kong (在香港成立為法團的認可機構) has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155);

authorized institution incorporated outside Hong Kong (在香港以外成立為法團的認可機構) has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155);

authorized insurer (獲授權保險人) has the same meaning as in the Insurance Companies Ordinance (Cap. 41);

bail-in instrument (內部財務重整文書) means an instrument made under section 58;

bank (銀行) has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155);

banking sector (銀行界) means the sector comprised of banking sector entities;

banking sector entity (銀行界實體) means any of the following—

(a) an authorized institution incorporated in Hong Kong;

(b) an authorized institution incorporated outside Hong Kong;

(c) a settlement institution, as defined by section 2 of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584), of a designated clearing and settlement system that is not otherwise an authorized institution (excluding a settlement institution that is wholly owned and operated by the Government);

(d) a system operator, as defined by section 2 of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584), of a designated clearing and settlement system (excluding a system operator that is wholly owned and operated by the Government);

(e) a designated within scope financial institution of which the Monetary Authority is designated under section 6(1)(a)(ii) as the resolution authority;

body corporate (法人團體) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622);

bridge institution (過渡機構)—see section 43;

business day (營業日) means a day that is not—

(a) a general holiday;

(b) a Saturday; or

(c) a black rainstorm warning day or gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

capital reduction instrument (資本縮減文書) means an instrument made under section 31(1);

chief executive officer (行政總裁), in relation to an entity, means (except in Part 9) a person (by whatever name called) who is responsible (alone or jointly with others) under the immediate authority of the directors for the implementation of the general strategy of the entity and for the general management of the business of the entity

and includes, if the entity is established or incorporated in a non-Hong Kong jurisdiction, the person who is responsible (alone or jointly with others) for the general management of the business of the entity in Hong Kong;

claims outstanding (未決申索) has the meaning given by paragraph 1(1) of Part 1 of the Third Schedule to the Insurance Companies Ordinance (Cap. 41);

class 1 securities (第1類證券) means shares or stock;

class 2 securities (第2類證券) means debentures and includes debenture stocks, loan stocks, bonds, certificates of deposit and any other instruments creating or acknowledging a debt;

class 3 securities (第3類證券) means warrants or other instruments that entitle the holder to acquire class 1 or class 2 securities;

clawback order (退扣令)—see section 146;

client (客户), in relation to a within scope financial institution, means—

(a) an entity for which the financial institution provides a service the provision of which constitutes a regulated activity and includes another financial institution that deposits with the financial institution securities or other property as collateral but, in connection with a leveraged foreign exchange contract, does not include a recognized counterparty; or

(b) an entity for which the financial institution, or a holding company or an affiliated operational entity of the financial institution, holds securities or other property in the course of carrying on a business as a trustee or custodian of securities or other property, whether on trust or by contract;

client assets (客户資產)—see section 3;

condition 1 (條件1) means the condition set out in section 25(2);

condition 2 (條件2) means the condition set out in section 25(3);

condition 3 (條件3) means the condition set out in section 25(4);

contract (合約) includes an arrangement of any kind (made, or evidenced, in writing) that imposes obligations on, or creates rights for, a party to it that are intended to be legally enforceable;

control function (監控職能), in relation to an entity, means any of the following functions that is likely to enable the person responsible for the performance of the function to exercise a significant influence on the business carried on by the entity—

(a) risk management function, that is, a function to establish the strategies, policies and procedures to manage different types of key risks of the entity;

(b) financial control function, that is, a function to oversee all financial matters (including investments, accounting and financial reporting) of the entity;

(c) compliance function, that is, a function to establish and formulate standards, policies and procedures to ensure compliance with legal and regulatory requirements that are applicable to the entity;

(d) internal audit function, that is, a function to establish and implement an audit plan to examine and evaluate the adequacy and effectiveness of the controls to manage risks of the entity;

(e) any other function specified in a notice under section 6(5);

Court means the Court of First Instance;

critical financial function (關鍵金融功能) means an activity or operation carried on, or a service provided, by a financial institution—

(a) on which an entity (other than a group company of the financial institution) relies; and

(b) that, if discontinued, would be likely to—

(i) lead to the disruption of services that are essential to the economy of Hong Kong;

(ii) undermine the general confidence of participants in the financial market in Hong Kong; or

(iii) give rise to contagion within the financial system of Hong Kong,

for any reason including the size, interconnectedness, complexity or cross-border activities of, or the market share held by, the financial institution or the group of companies of which the financial institution is a member;

cross-sectoral group (跨界別集團) means a group of companies that includes within scope financial institutions from more than one sector;

current (最新), in relation to a list published by the Financial Stability Board, means the list as updated or supplemented by that Board from time to time;

deposit (存款) has the meaning given by section 2(1) of the Deposit Protection Scheme Ordinance (Cap. 581);

deputy chief executive officer (副行政總裁), in relation to an entity, means a person (by whatever name called) who is responsible (alone or jointly with others) under the immediate authority of the chief executive officer of the entity for the implementation of the general strategy of

the entity and for the general management of the business of the entity and includes, if the entity is established or incorporated in a non-Hong Kong jurisdiction, the person who is responsible (alone or jointly with others) under the immediate authority of the chief executive officer of the entity for the general management of the business of the entity in Hong Kong;

designated clearing and settlement system (指定結算及交收系統) has the meaning given by section 2 of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584);

designated within scope financial institution (指定受涵蓋金融機構) means a financial institution that is designated under section 6(1)(a) as a within scope financial institution;

director (董事), except in Part 9, has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622);

document (文件) includes any form of input into, or output from, an information system and any writing or similar material (whether produced mechanically, electronically, magnetically, optically, manually or by any other means);

entity (實體) means a person;

entity in resolution (被處置實體) means a within scope financial institution, or a holding company or affiliated operational entity of a within scope financial institution, the resolution of which has been initiated and is ongoing;

financial institution (金融機構) means an entity that is primarily engaged in the provision of financial services or the conduct of financial activities and includes a bank, an insurer, a licensed corporation and financial market infrastructure;

financial market infrastructure (金融市場基建) means a multilateral system among participating financial institutions used for clearing, settling or recording payments, securities, derivatives or other financial transactions and includes any payment system, central securities depository, securities settlement system, central counterparty and trade repository;

financial services holding company (金融服務控權公司) means a holding company that is, or all the subsidiaries of which are, primarily engaged in the provision of, or in supporting the provision of, financial services or the conduct of financial activities;

Financial Stability Board (金融穩定理事會) means the Financial Stability Board established under that name by the Heads of State and Government of the Group of Twenty (G20) forum of 19 countries and the European Union at a summit held in London, United Kingdom on 2 April 2009 and includes any successor body of that Board;

fixed remuneration (固定報酬) means remuneration (whether in cash or non-cash benefits) that is payable to a person of an amount that is fixed at the beginning of a period in respect of services provided by the person to a financial institution during that period excluding any payment that is in the nature of a bonus or incentive payment related to the performance of the person, or the performance (including profitability) of the financial institution or of any part of the business of the financial institution, during any period;

function (職能) includes power, authority and duty;

global systemically important bank (具全球系統重要性銀行) means an entity that is, or is a member of a group of companies that is or that includes a company that is, included in—

(a) the current list of global systemically important banks published by the Financial Stability Board; or

(b) any other current list published by that Board that is designated by the Financial Secretary under section 6(4) as being equivalent to the list mentioned in paragraph (a);

global systemically important insurer (具全球系統重要性保險人) means an entity that is, or is a member of a group of companies that is or that includes a company that is, included in—

(a) the current list of global systemically important insurers published by the Financial Stability Board; or

(b) any other current list published by that Board that is designated by the Financial Secretary under section 6(4) as being equivalent to the list mentioned in paragraph (a);

group company (集團公司), in relation to a financial institution, means a body corporate that is (or, but for the performance of a function by a resolution authority or a non-Hong Kong resolution authority, would be) a member of the same group of companies as the financial institution;

group of companies (公司集團) means a holding company and its subsidiaries, irrespective of where any of them is incorporated;

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);

independent valuer (獨立估值師) means a person appointed under section 96(2);

information (資訊、資料、消息) includes data, text, images, sound codes, computer programmes, software and databases, and any combination of them;

information system (資訊系統) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

Insurance Authority (保險業監督) means the Insurance Authority appointed under section 4 of the Insurance Companies Ordinance (Cap. 41);

insurance sector (保險界) means the sector comprised of insurance sector entities;

insurance sector entity (保險界實體) means any of the following—

(a) an authorized insurer that is a global systemically important insurer;

(b) a designated within scope financial institution of which the Insurance Authority is designated under section 6(1)(a)(ii) as the resolution authority;

insurer (保險人) has the meaning given by section 2(1) of the Insurance Companies Ordinance (Cap. 41);

lead resolution authority (主導處置機制當局) means a resolution authority designated under section 7;

liabilities (法律責任、負債、債務) means any liabilities, duties or obligations (whether present or future, vested or contingent or personal or assignable) and includes any liabilities under class 2 or class 3 securities;

licensed corporation (持牌法團) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

loss-absorbing capacity requirement rule (《吸收虧損能力規定規則》) means a rule made under section 19(1);

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

non-bank non-insurer global systemically important financial institution (具全球系統重要性非銀行非保險人金融機構) means an entity that is, or is a member of a group of companies that is or that includes a company that is, included in—

(a) the current list of non-bank non-insurer global systemically important financial institutions published by the Financial Stability Board; or

(b) any other current list published by that Board that is designated by the Financial Secretary under section 6(4) as being equivalent to the list mentioned in paragraph (a);

non-Hong Kong financial institution (非香港金融機構) means a financial institution established or incorporated in a non-Hong Kong jurisdiction;

non-Hong Kong group company (非香港集團公司), in relation to a non-Hong Kong financial institution, means an entity that is (or, but for the performance of a function by a resolution authority or a non-Hong Kong resolution authority, would be) a member of the same group of companies as the non-Hong Kong financial institution;

non-Hong Kong jurisdiction (非香港司法管轄區) means a jurisdiction other than Hong Kong;

non-Hong Kong law (非香港法律) means the law of a non-Hong Kong jurisdiction;

non-Hong Kong property (非香港財產) means any property in respect of which any issue arising in any proceedings would have to be determined (in accordance with the rules of private international law) by reference to non-Hong Kong law;

non-Hong Kong resolution action (非香港處置行動) means an action under the law of a non-Hong Kong jurisdiction to manage the failure or likely failure of a non-Hong Kong financial institution or non-Hong Kong group company—

(a) the anticipated results of which are, in relation to the non-Hong Kong financial institution or non-Hong Kong group company, broadly comparable to results that could have been anticipated from the exercise of a power conferred by Part 5, or by Schedule 3, 4 or 6, on a resolution authority in respect of an entity in Hong Kong; and

(b) the objectives of which are, in relation to that jurisdiction, broadly comparable to the resolution objectives as they apply in relation to Hong Kong;

non-Hong Kong resolution authority (非香港處置機制當局) means an entity in a non-Hong Kong jurisdiction that performs in that jurisdiction functions broadly corresponding to those performed by a resolution authority in Hong Kong;

non-Hong Kong resolution plan (非香港處置計劃) means a plan developed or approved by a non-Hong Kong resolution authority to support strategies devised by it for securing the orderly resolution of an entity;

officer (高級人員), in relation to an entity, means (except in Part 8) a person who is—

(a) a director of the entity;

(b) the chief executive officer or deputy chief executive officer of the entity; or

(c) a person who is employed by, or acts for or on behalf of or under an arrangement with, the entity and is principally responsible, alone or jointly with others, for—

(i) the management of part of the business of the entity; or

(ii) the performance of one or more of the control functions of the entity;

omission (不作為、遺漏) includes a series of omissions;

onward bridge institution (後續過渡機構)—see section 44;

Part 5 instrument (第5部文書) means any of the following instruments made under Part 5—

(a) a securities transfer instrument;

(b) a property transfer instrument;

(c) a bail-in instrument;

party (關涉方)—

(a) in relation to a proceeding in the Resolution Compensation Tribunal, means—

(i) the applicant under section 98(2) or 107(1), including, in the case of an application under section 107(1), an applicant as the representative of 2 or more entities;

(ii) an applicant under regulations made under section 184;

(iii) a person who is joined as a party to an application in accordance with rules made by the Chief Justice under section 140;

(iv) the relevant resolution authority, if it is not the applicant; or

(v) the independent valuer, except in the case of an application under regulations made under section 184;

(b) in relation to a proceeding in the Resolvability Review Tribunal, means—

(i) the applicant under section 17(1) or under a loss-absorbing capacity requirement rule;

(ii) a person who is joined as a party to an application in accordance with rules made by the Chief Justice under section 122; or

(iii) the relevant resolution authority;

point of non-viability provision (陷入不可持續經營狀況條文)—

(a) in relation to an Additional Tier 1 capital instrument, means a provision mentioned in section 1(q) of Schedule 4B to the Banking (Capital) Rules (Cap. 155 sub. leg. L); and

(b) in relation to a Tier 2 capital instrument, means a provision mentioned in section 1(k) of Schedule 4C to the Banking (Capital) Rules (Cap. 155 sub. leg. L);

policy holder (保單持有人) has the meaning given by section 2(1) of the Insurance Companies Ordinance (Cap. 41);

pre-resolution creditor (處置前債權人), in relation to an affected entity, means a person who was a creditor of the affected entity immediately before the resolution of the entity was initiated;

pre-resolution shareholder (處置前股東), in relation to an affected entity, means a person who, immediately before the resolution of the entity was initiated, held a security issued by the affected entity;

property transfer instrument (財產轉讓文書)—see section 2(1) of Schedule 4;

protected deposit (受保障存款) has the meaning given by section 2(1) of the Deposit Protection Scheme Ordinance (Cap. 581);

recognition instrument (確認文書) means an instrument made under section 187(2);

recognized clearing house (認可結算所) means a company recognized, or deemed to have been recognized, under section 37(1) of the Securities and Futures Ordinance (Cap. 571) as a clearing house;

recognized exchange company (認可交易所) means a company recognized, or deemed to have been recognized, under section 19(2) of the Securities and Futures Ordinance (Cap. 571) as an exchange company;

recognized stock market (認可證券市場) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

record (紀錄) means any record of information (however compiled or stored) and includes—

(a) any books, deeds, registers, contracts, vouchers, receipts or data material, or information that is recorded otherwise than in a legible form but is capable of being reproduced in a legible form;

(b) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of other equipment) of being reproduced; and

(c) any film (including a microfilm), tape or other device in which visual images are embodied so as to be capable (with or without the aid of other equipment) of being reproduced;

resolution (處置) means the process for addressing the fact that a within scope financial institution has ceased, or is likely to cease, to be viable that involves the application of one or more stabilization options and the performance of related functions;

resolution authority (處置機制當局) means—

(a) in relation to a banking sector entity, the Monetary Authority;

(b) in relation to an insurance sector entity, the Insurance Authority; or

(c) in relation to a securities and futures sector entity, the Securities and Futures Commission;

Resolution Compensation Tribunal (處置補償審裁處) means the Tribunal established by section 127(1);

resolution funding account (處置資金帳户)—see section 176;

resolution funds (處置資金)—see section 176;

resolution objectives (處置目標) means the objectives specified in section 8(1);

Resolvability Review Tribunal (處置可行性覆檢審裁處) means the Tribunal established by section 110(1);

rights (權利) means any rights, powers, privileges or immunities (whether present or future, vested or contingent or personal or assignable);

Scheme member (計劃成員) has the meaning given by section 2(1) of the Deposit Protection Scheme Ordinance (Cap. 581);

section 10 entity (第 10 條實體) means an entity appointed by a resolution authority under section 10;

sector (界別) means the banking sector, the insurance sector or the securities and futures sector;

securities (證券), subject to subsection (6) and section 3(2), includes anything falling within any of the following classes—

(a) class 1 securities;

(b) class 2 securities;

(c) class 3 securities;

Securities and Futures Commission (證監會) means the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap. 571);

securities and futures sector (證券及期貨界) means the sector comprised of securities and futures sector entities;

securities and futures sector entity (證券及期貨界實體) means any of the following—

(a) a licensed corporation that is a non-bank non-insurer global systemically important financial institution;

(b) a licensed corporation that is a branch or subsidiary of, or a subsidiary of a holding company of, a global systemically important bank or a global systemically important insurer;

(c) a recognized clearing house;

(d) a designated within scope financial institution of which the Securities and Futures Commission is designated under section 6(1)(a)(ii) as the resolution authority;

(e) a recognized exchange company that is designated under section 6(1)(b) as a within scope financial institution;

securities transfer instrument (證券轉讓文書)—see section 2(1) of Schedule 3;

stabilization option (穩定措施) means an option mentioned in section 33(2)(a), (b), (c), (d) or (e);

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

Tier 2 capital instrument (二級資本票據) means a capital instrument issued by an authorized institution that, subject to subsection (7), meets the qualifying criteria set out in Schedule 4C to the Banking (Capital) Rules (Cap. 155 sub. leg. L), including the requirement that the terms and conditions of the instrument contain a point of non-viability provision;

title transfer arrangement (所有權轉讓安排)—see section 74;

TPO company (暫時公有公司) means a temporary public ownership company referred to in section 69;

transfer date (轉讓日期) means the date on which, or time at which, a securities transfer instrument or property transfer instrument (or the relevant part of it) takes effect;

transferor (出讓人), in relation to a transfer of securities, assets, rights or liabilities, means the entity that held them, or in which they were vested, immediately before the transfer;

variable remuneration (浮動報酬) means remuneration (whether in cash or non-cash benefits), other than fixed remuneration, that is payable to a person in respect of services provided by the person to a financial institution;

wages (工資) has the meaning given by section 2(1) of the Employment Ordinance (Cap. 57);

winding up hierarchy principles (清盤等級原則) means—

(a) the principle that holders of securities issued by, or creditors of, a financial institution should as a general rule be treated in relation to a bail-in provision in accordance with the priority they would enjoy on a winding up of the institution; and

(b) the principle that holders of securities issued by, or creditors of, a financial institution who would have equal priority on a winding up of the financial institution ought to bear losses on an equal footing with each other;

winding up proceedings (清盤程序), in relation to a financial institution or a holding company of a financial institution, includes the taking of any step—

(a) under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) for the voluntary winding up of the financial institution or holding company or its winding up by the Court;

(b) in connection with a proposal for the entering into of an arrangement or compromise under Division 2 of Part 13 of the Companies Ordinance (Cap. 622) or the effecting of an amalgamation under Division 3 of that Part; or

(c) in connection with the appointment of a receiver or manager of the property of the financial institution or holding company;

within scope financial institution (受涵蓋金融機構) means—

(a) a banking sector entity;

(b) an insurance sector entity; or

(c) a securities and futures sector entity.

(2) For the purposes of this Ordinance, the resolution of an entity is initiated at the point when a Part 5 instrument is first made in respect of it.

(3) For the purposes of this Ordinance, possession of a record or document includes having power over, or custody or control of, the record or document.

(4) A reference in this Ordinance to a bridge institution includes an onward bridge institution.

(5) A reference in this Ordinance to financial market infrastructure that is a clearing and settlement system, as defined by section 2 of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584), includes a settlement institution, as so defined, or system operator, as so defined, in relation to the financial market infrastructure.

(6) For the purposes of the definition of ***client*** in subsection (1)—

leveraged foreign exchange contract (槓桿式外匯交易合約) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

property (財產) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

recognized counterparty (認可對手方) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

regulated activity (受規管活動) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

securities (證券) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).

(7) For the purposes of the definition of ***Tier 2 capital instrument*** in subsection (1), the qualifying criteria set out in Schedule 4C to the Banking (Capital) Rules (Cap. 155 sub. leg. L) apply as if in section 1(d) of that Schedule the expression “, and the recognition of the instrument in regulatory capital in the remaining 5 years before maturity is amortized on a straight line basis of 20% per year” were omitted.

3. Interpretation: client assets

(1) In this Ordinance—

client assets (客户資產), in relation to a within scope financial institution, means securities or other property (other than excluded property) received or held by or on behalf of any of the following entities on behalf of a client of the entity or in which a client of the entity has a legal or equitable interest—

(a) the financial institution in the course of carrying on a business in a regulated activity for the carrying on of which it is licensed or registered under Part V of the Securities and Futures Ordinance (Cap. 571);

(b) a holding company or an affiliated operational entity of the financial institution in relation to the business mentioned in paragraph (a);

(c) the financial institution, or a holding company or affiliated operational entity of the financial institution, in the course of carrying on a business as a trustee or custodian of securities or other property for another entity, whether on trust or by contract.

(2) For the purposes of the definition of ***client assets*** in subsection (1)—

associated entity (有聯繫實體), in relation to a licensed corporation, has the same meaning as it has in relation to an intermediary in the Securities and Futures Ordinance (Cap. 571);

dealing in OTC derivative products (場外衍生工具產品交易) has the meaning given by Part 2 of Schedule 5 to the Securities and Futures Ordinance (Cap. 571);

excluded property (獲豁除財產) means any of the following—

(a) deposits held by an authorized institution;

(b) assets held by an authorized insurer or any amount set aside by an authorized insurer for claims outstanding;

(c) rights of a policy holder in relation to the insurance business of an authorized insurer;

(d) assets transferred under a title transfer arrangement in which a client does not have a legal or equitable interest;

(e) collateral posted by a dealer with a licensed corporation, or with a holding company, an affiliated operational entity or an associated entity of a licensed corporation for the benefit of the licensed corporation, in a principal to principal transaction involving dealing in OTC derivative products;

property (財產) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

regulated activity (受規管活動) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

securities (證券) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).

4. Objects of this Ordinance

The objects of this Ordinance are—

(a) to establish a regime for the orderly resolution of financial institutions with a view to avoiding or mitigating the risks otherwise posed by their non-viability to the stability and effective working of the financial system of Hong Kong, including to the continued performance of critical financial functions;

(b) for that purpose to appoint bodies as operationally-independent resolution authorities with authority to decide whether to initiate the resolution of a financial institution and which stabilization options to apply and other powers to exercise in effecting a resolution; and

(c) to specify resolution objectives and conditions to guide resolution authorities in performing their functions.

5. When within scope financial institution ceases to be viable

(1) For the purposes of this Ordinance, a within scope financial institution ceases to be viable if—

(a) for an institution that requires an authorization under any Ordinance for it to be able to carry on the whole or any part of its business—

(i) it has contravened a condition with which it must comply, has failed to meet a criterion that it must meet or has failed to perform a duty that it must perform for it to continue to have that authorization; and

(ii) as a consequence, the removal of that authorization is warranted; or

(b) in any other case, it is unable to discharge the obligations that it must discharge for it to effectively carry on its business.

(2) A reference in subsection (1) to authorization is a reference to an authorization of any kind including that arising by having a licence, approval, recognition or designation under an Ordinance.

6. Power of Financial Secretary to designate or specify certain matters

(1) The Financial Secretary may, by notice published in the Gazette—

(a) designate—

(i) a financial institution as a within scope financial institution; and

(ii) the Insurance Authority, the Monetary Authority or the Securities and Futures Commission as the resolution authority of that institution; or

(b) on the recommendation of the Securities and Futures Commission, designate a recognized exchange company as a within scope financial institution.

(2) The Financial Secretary may only act under subsection (1)(a) or (b), and the Securities and Futures Commission may only make a recommendation under subsection (1)(b), if of the opinion that a risk could be posed to the stability and effective working of the financial system of Hong Kong, including to the continued performance of critical financial functions, should the financial institution or the recognized exchange company, as the case requires, cease to be viable.

(3) Before acting under subsection (1)(a), the Financial Secretary must consult the resolution authority proposed to be designated under that subsection and each other resolution authority.

(4) The Financial Secretary may, by notice published in the Gazette, designate a current list (irrespective of its title) published by the Financial Stability Board as being, for the purposes of this Ordinance, a list equivalent to any of the following lists published by that Board (whether before, on or after the commencement of this subsection)—

(a) a list of global systemically important banks;

(b) a list of global systemically important insurers;

(c) a list of non-bank non-insurer global systemically important financial institutions.

(5) The Financial Secretary may, by notice published in the Gazette, specify a function to be a control function for the purposes of paragraph (e) of the definition of ***control function*** in section 2(1).

(6) However, the Financial Secretary must not specify a function to be a control function under subsection (5) unless the Financial Secretary is satisfied that the function is likely to enable the person responsible for the performance of the function to exercise a significant influence on the business carried on by an entity.

7. Power of Financial Secretary to designate lead resolution authority

The Financial Secretary may, by notice published in the Gazette, designate a resolution authority as the lead resolution authority of a cross-sectoral group.

Part 2

Resolution Authorities

8. Resolution objectives

(1) In performing, or considering performing, any function under this Ordinance, a resolution authority must have regard to the following objectives—

(a) to promote, and seek to maintain, the stability and effective working of the financial system of Hong Kong, including the continued performance of critical financial functions;

(b) to seek to protect deposits or insurance policies of a within scope financial institution to no less an extent than they would be protected under a protective scheme mentioned in Schedule 1 on a winding up of the financial institution;

(c) to seek to protect client assets of a within scope financial institution to no less an extent than they would be protected on a winding up of the financial institution;

(d) subject to paragraphs (a), (b) and (c), to seek to contain the costs of resolution and, in so doing, protect public money.

(2) In carrying out a resolution of a within scope financial institution, a resolution authority must seek to act in the way that the resolution authority considers at the time of acting to be most appropriate for meeting the resolution objectives.

9. Role of lead resolution authority

(1) This section applies in relation to a within scope financial institution, within a cross-sectoral group, the resolution authority of which is not the lead resolution authority of the group.

(2) Subject to subsection (7), the lead resolution authority may, if it considers that it is necessary to do so in the circumstances—

(a) give the resolution authority of the financial institution written directions as to the performance by it of any function under this Ordinance in relation to the financial institution; or

(b) perform any function under this Ordinance in relation to the financial institution as if it were its resolution authority.

(3) The resolution authority must comply with any written direction given to it under subsection (2)(a).

(4) If a written direction is given to a resolution authority under subsection (2)(a), then despite anything to the contrary in this or any other Ordinance, the resolution authority is not required, for any purpose connected with the performance of a function to which the direction relates—

(a) to form any opinion;

(b) to be satisfied as to any matter (including the existence of particular circumstances); or

(c) to consult any entity.

(5) This section does not prevent a resolution authority from performing a function under this Ordinance in relation to the financial institution without having been given a written direction under subsection (2)(a).

(6) However, only the lead resolution authority may—

(a) make a Part 5 instrument in relation to the financial institution; or

(b) make a recognition instrument relating to a non-Hong Kong resolution action taken in relation to the financial institution or a group company of the financial institution.

(7) For a within scope financial institution that is an authorized institution, only the resolution authority of the financial institution may make a capital reduction instrument in respect of the financial institution and, if the financial institution is within a cross-sectoral group, the lead resolution authority may not give any written direction to that resolution authority under subsection (2)(a) as to the exercise of the power to make such an instrument.

10. Appointment of entities to assist resolution authority

A resolution authority may, on any terms and conditions that the resolution authority thinks fit, appoint one or more entities to assist it in the performance of its functions as a resolution authority or lead resolution authority under this Ordinance.

11. General power of resolution authority

A resolution authority has the power to do all things necessary or expedient to be done for, or in connection with, or incidental to, the performance of its functions under this Ordinance.

Part 3

Powers Related to Resolution

Division 1—Preparing for Resolution

Subdivision 1—Resolvability Assessment and Resolution Planning

12. Resolvability assessment

(1) A resolution authority of a within scope financial institution may from time to time conduct a resolvability assessment to determine whether there are any impediments to the orderly resolution of either of the following and, if so, the extent of those impediments—

(a) the within scope financial institution;

(b) a holding company of the within scope financial institution.

(2) The lead resolution authority of a cross-sectoral group may from time to time conduct a resolvability assessment in relation to that group to determine whether there are any impediments to the orderly resolution of either of the following and, if so, the extent of those impediments—

(a) a within scope financial institution within that group;

(b) a holding company of a within scope financial institution within that group.

(3) A resolution authority of a within scope financial institution within a cross-sectoral group that is not the lead resolution authority of the group must take all necessary steps to support the lead resolution authority in performing its functions under subsection (2).

Note—

See section 28 on the resolution of a holding company of a within scope financial institution.

13. Resolution planning

(1) A resolution authority of a within scope financial institution may from time to time—

(a) devise strategies for securing an orderly resolution of the financial institution or a holding company of the financial institution; and

(b) support the strategies mentioned in paragraph (a) by doing either or both of the following—

(i) developing one or more resolution plans;

(ii) adopting the whole or part of one or more non-Hong Kong resolution plans.

(2) The lead resolution authority of a cross-sectoral group may from time to time—

(a) devise strategies for securing an orderly resolution of within scope financial institutions, or holding companies of within scope financial institutions, within that group; and

(b) support the strategies mentioned in paragraph (a) by doing either or both of the following—

(i) developing one or more resolution plans for the group;

(ii) adopting the whole or part of one or more non-Hong Kong resolution plans.

(3) A resolution authority of a within scope financial institution within a cross-sectoral group that is not the lead resolution authority of the group must take all

necessary steps to support the lead resolution authority in performing its functions under subsection (2).

Note—

See section 155 for when powers conferred by Part 10 are exercisable.

Subdivision 2—Removal of Impediments

14. Power to direct removal of impediments

(1) This section applies if at any time the resolution authority of a within scope financial institution or, for a within scope financial institution within a cross-sectoral group, the lead resolution authority of the group, is of the opinion that significant impediments exist to the orderly resolution, in accordance with a resolution plan mentioned in section 13, of—

(a) the within scope financial institution; or

(b) a holding company of the within scope financial institution.

(2) The resolution authority or lead resolution authority may, by written notice served on the financial institution or holding company, direct it to take, within a period specified in the notice, any measures in relation to its structure (including group structure), operations (including intra-group dependencies), assets, rights or liabilities that—

(a) are, in the opinion of the resolution authority or lead resolution authority, reasonably required to remove, or mitigate the effect of, those impediments; and

(b) are specified in the notice.

(3) Before serving a notice under subsection (2), the resolution authority or lead resolution authority must have regard to—

(a) how difficult it would be to carry out an orderly resolution of the financial institution or holding company, in accordance with a resolution plan mentioned in section 13, if the contemplated measures were not taken;

(b) the likely impact of complying with the notice, including on the future viability and capacity of the financial institution to continue to perform critical financial functions; and

(c) if applicable, the advisability of taking measures to remove impediments in Hong Kong to facilitate the orderly resolution of the financial institution or holding company in accordance with a non-Hong Kong resolution plan.

(4) A period specified in a notice under subsection (2) must be one that, in the opinion of the resolution authority or lead resolution authority, is reasonable in all the circumstances.

15. Safeguards for entity served with notice

(1) A notice under section 14(2) must—

(a) state when the direction contained in it takes effect;

(b) give reasons for the giving of the direction; and

(c) specify a reasonable period within which the financial institution or the holding company may make representations to the resolution authority or lead resolution authority about the direction.

(2) If representations are made by the financial institution or the holding company within the period specified under subsection (1)(c), the resolution authority or lead resolution authority must, within a reasonable period, consider those representations and decide—

(a) whether to confirm or revoke the notice; and

(b) if the notice is revoked, whether to serve a fresh notice containing a different direction.

(3) The resolution authority or lead resolution authority must serve written notice on the financial institution or holding company of its decision under subsection (2).

(4) If no representation is made by the financial institution or holding company within the period specified under subsection (1)(c), the resolution authority or lead resolution authority must serve written notice on it that the notice under section 14(2) is confirmed.

16. Offence not to comply with notice

(1) A financial institution or holding company served with a notice under section 14(2) that is confirmed under section 15(2) or (4), commits an offence if the institution or company fails, without reasonable excuse, to comply with the notice within the period specified in it.

(2) A financial institution or holding company that commits an offence under subsection (1) is liable—

(a) on conviction on indictment to a fine of $2,000,000 and, in the case of a continuing offence, to a further fine at level 6 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues.

(3) If a financial institution or holding company commits an offence under subsection (1), an officer of the financial institution or holding company also commits an offence under that subsection if the officer—

(a) authorized or permitted the commission of the offence by the financial institution or holding company; or

(b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the financial institution or holding company.

(4) An officer who commits an offence under subsection (1) is liable—

(a) on conviction on indictment to a fine of $2,000,000 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at level 6 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues.

(5) An officer of a financial institution or holding company may commit an offence under subsection (1) whether or not the financial institution or holding company has been prosecuted for, or found guilty of, an offence under that subsection.

17. Review of decisions

(1) A within scope financial institution or a holding company of a within scope financial institution that is aggrieved by a decision of a resolution authority or lead resolution authority to serve on it a notice under section 14(2) may, at any time within the period specified in subsection (3),

apply to the Resolvability Review Tribunal for a review of the decision.

(2) An application for review must set out the grounds for the application and be accompanied by a copy of the notice under section 14(2).

(3) The period specified for the purposes of subsection (1) is the period of 30 days beginning on the date on which a notice under section 15(3) or (4) was served on the financial institution or holding company in relation to the decision mentioned in subsection (1).

(4) Despite subsection (3), the Resolvability Review Tribunal, on the written application of any person, may by order extend the time within which an application for review may be made if satisfied that there is good cause for granting the extension.

(5) The making of an application to the Resolvability Review Tribunal for review of a decision operates as a stay of execution of the decision.

18. Determination of application

(1) As soon as practicable after an application under section 17(1) is received by it, the Resolvability Review Tribunal must send a copy of the application to the resolution authority or lead resolution authority that served the notice under section 14(2).

(2) In reviewing a decision, the Resolvability Review Tribunal must ensure that the parties to the proceeding are given a reasonable opportunity of being heard.

(3) The standard of proof required to determine any question or issue before the Resolvability Review Tribunal is the standard of proof applicable to civil proceedings in a court of law.

(4) In determining a review of a decision, the Resolvability Review Tribunal may—

(a) confirm or set aside the decision; or

(b) remit the matter in question to the resolution authority or lead resolution authority that served the notice under section 14(2) with any direction that it considers appropriate, which may include a direction to make a fresh decision in respect of any matter specified by the Tribunal.

Subdivision 3—Loss-absorbing Capacity Requirements

19. Loss-absorbing capacity requirements

(1) A resolution authority may make rules—

(a) prescribing loss-absorbing capacity requirements for within scope financial institutions or their group companies; or

(b) for connected purposes.

(2) The loss-absorbing capacity requirement rules may provide for their application on an unconsolidated balance sheet basis to an individual entity or on a consolidated balance sheet basis to 2 or more entities grouped together by the resolution authority.

(3) Without limiting subsection (1), the loss-absorbing capacity requirement rules—

(a) may be of general or special application and may be made so as to apply only in specified circumstances;

(b) may make different provisions for different classes of entities;

(c) may give effect to standards relating to loss-absorbing capacity issued by an international standard-setting body, whether in whole or in part and subject to any modifications that the resolution authority thinks fit, having regard to the prevailing circumstances in Hong Kong;

(d) may apply, adopt or incorporate by reference, with or without modification, any document relating to loss-absorbing capacity issued by an international standard-setting body, whether in whole or in part and whether in force at the time of issue or as in force from time to time;

(e) may provide that a matter (***notifiable matter***) prescribed in the rules (including a failure to comply with a loss-absorbing capacity requirement rule) is a matter about which an entity specified in the rules for the purpose, must—

(i) as soon as practicable notify the resolution authority of the entity; and

(ii) provide particulars to that resolution authority on request;

(f) may specify the form that any loss-absorbing capacity is to take;

(g) without limiting paragraph (f), may specify criteria to be met by debt instruments issued for complying with loss-absorbing capacity requirements;

(h) without limiting paragraph (f), may require that debt instruments issued for complying with loss-absorbing capacity requirements contain contractual terms designed to promote recognition of their loss-absorbing characteristics and their eligibility to be the subject of a bail-in provision;

(i) may prescribe a loss-absorbing capacity requirement in the form of a range with upper and lower limits, and the circumstances under which the resolution authority of an entity may determine that a specific loss-absorbing capacity requirement within that range applies to the entity;

(j) may empower the resolution authority of an entity to vary, in accordance with a procedure set out in the rules and in circumstances set out in the rules, a loss-absorbing capacity requirement rule applicable to the entity;

(k) may provide that a decision, of a kind prescribed in the rules, made by a resolution authority may be reviewed by the Resolvability Review Tribunal, as set out in the rules, on the application of a within scope financial institution or group company to which the decision relates;

(l) may provide for the taking of remedial action in the event of an entity contravening the rules; and

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

(4) An entity that, without reasonable excuse, fails to comply with a requirement applicable to it under the loss-absorbing capacity requirement rules to notify, or to provide particulars to, the resolution authority about a notifiable matter, commits an offence and is liable—

(a) on conviction on indictment to a fine of $2,000,000 and, in the case of a continuing offence, to a further fine at level 6 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues.

(5) An entity that, without reasonable excuse, fails to comply with a requirement applicable to it under the loss-absorbing capacity requirement rules to take remedial action in the event of the entity contravening the rules, commits an offence and is liable—

(a) on conviction on indictment to a fine of $2,000,000 and, in the case of a continuing offence, to a further fine at level 6 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues.

(6) If an entity commits an offence under subsection (4) or (5), an officer of the entity also commits an offence under that subsection if the officer—

(a) authorized or permitted the commission of the offence by the entity; or

(b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the entity.

(7) An officer who commits an offence under subsection (4) or (5) is liable—

(a) on conviction on indictment to a fine of $2,000,000 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at level 6 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues.

(8) An officer of an entity may commit an offence under subsection (4) or (5) whether or not the entity has been prosecuted for, or found guilty of, an offence under that subsection.

(9) In this section—

Basel Committee (巴塞爾委員會) has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155);

International Association of Insurance Supervisors (國際保險監督聯會) means the body, whose general secretariat is based in Basel, Switzerland, that sets international standards for insurance supervision and includes any successor body of that body;

International Organization of Securities Commissions (證券委員會國際組織) means the international association of securities regulators, whose general secretariat is based in Madrid, Spain, that sets international standards for securities markets and promotes information exchange and cooperation among its members and includes any successor body of that association;

international standard-setting body (國際標準訂立團體) means—

(a) the Financial Stability Board;

(b) the Basel Committee;

(c) the International Association of Insurance Supervisors;

(d) the International Organization of Securities Commissions; or

(e) any other body that issues international standards relating to loss-absorbing capacity;

loss-absorbing capacity (吸收虧損能力), in relation to an entity, means a financial resource—

(a) that the entity maintains or to which it has unconstrained access and that may, but need not, include class 2 securities issued by the entity and loans made to the entity; and

(b) that is capable, in the event of the entity ceasing, or becoming likely to cease, to be viable, of being used to absorb losses of the entity and contribute to the restoration of its capital position.

Division 2—Directions

20. Interpretation

In this Division—

related person (關連人士), in relation to a within scope financial institution, means any of the following—

(a) a group company of the financial institution;

(b) a director of the financial institution or of a group company of the financial institution;

(c) the chief executive officer or deputy chief executive officer of the financial institution or of a group company of the financial institution.

21. When powers are exercisable

The powers conferred by this Division on a resolution authority are only exercisable with respect to a within scope financial institution or a related person if the resolution authority is satisfied that conditions 1 and 3 are met in the case of the financial institution.

22. Power to give directions

(1) A resolution authority may, by written notice served on a within scope financial institution or a related person, direct the financial institution or related person to take or refrain from taking, within a period specified in the notice, an action specified in the notice in relation to the affairs, business or property of the financial institution or a group company of the financial institution.

(2) However, a resolution authority may only give a direction by a notice under subsection (1) if—

(a) it is of the opinion that giving the direction—

(i) will assist in meeting the resolution objectives; or

(ii) will facilitate the exercise of a power conferred by this Ordinance on the resolution authority or the Court; and

(b) the notice gives the reason for that opinion.

(3) A direction under subsection (1) may extend to a within scope financial institution or related person outside Hong Kong or the taking, or refraining from taking, of an action outside Hong Kong in relation to the affairs, business or property in Hong Kong of a within scope financial institution or group company.

(4) A director of a financial institution or group company is not to be regarded as failing to discharge any duty owed to any person because of any act done or omitted to be done in good faith in compliance with, or in giving effect to, a direction.

(5) A financial institution or a related person is immune from liability in damages in respect of any act done or omitted to be done in good faith by the institution or person in compliance with, or in giving effect to, a direction.

(6) A financial institution or related person commits an offence if the institution or person, without reasonable excuse, fails to comply with a direction under subsection (1) within the period of time specified in it.

(7) An institution or person who commits an offence under subsection (6) is liable—

(a) on conviction on indictment to a fine of $2,000,000 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at level 6 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues.

(8) If a financial institution or a group company commits an offence under subsection (6), an officer of the financial institution or group company also commits an offence under that subsection if the officer—

(a) authorized or permitted the commission of the offence by the financial institution or group company; or

(b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the financial institution or group company.

(9) An officer who commits an offence under subsection (6) is liable—

(a) on conviction on indictment to a fine of $2,000,000 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at level 6 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues.

(10) An officer of a financial institution or group company may commit an offence under subsection (6) whether or not the financial institution or group company has been prosecuted for, or found guilty of, an offence under that subsection.

Division 3—Removal of Directors etc.

23. When powers are exercisable

The powers conferred by this Division on a resolution authority are only exercisable with respect to a within scope financial institution or a holding company of a within scope financial institution if the resolution authority is satisfied that conditions 1 and 3 are met in the case of the financial institution.

24. Power to remove directors etc.

(1) A resolution authority may, by notice in writing given to a person who is a director of a within scope financial institution incorporated in Hong Kong or a holding company incorporated in Hong Kong of a within scope financial institution, revoke the person's appointment as a director with effect from a date, or the occurrence of an event, specified in the notice.

(2) A resolution authority may, by notice in writing given to a person who is the chief executive officer or deputy chief executive officer of a within scope financial institution or a holding company of a within scope financial institution, revoke the person's appointment as such an officer with effect from a date, or the occurrence of an event, specified in the notice.

(3) A notice under subsection (2) only applies to the appointment of a person as the chief executive officer or deputy chief executive officer of a financial institution or holding company that is established or incorporated in a non-Hong Kong jurisdiction in so far as the appointment relates to the business in Hong Kong of the financial institution or holding company.

(4) However, a resolution authority may only give a notice under subsection (1) or (2) if—

(a) it is of the opinion that removing the director, chief executive officer or deputy chief executive officer from office will assist in meeting the resolution objectives; and

(b) the notice gives the reason for that opinion.

(5) A person commits an offence if the person, without reasonable excuse, acts or continues to act as a director, or as the chief executive officer or deputy chief executive officer, of a financial institution or a holding company of a within scope financial institution in contravention of a notice given under subsection (1) or (2).

(6) A person who commits an offence under subsection (5) is liable—

(a) on conviction on indictment to a fine of $2,000,000 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at level 6 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues.

(7) Any transaction entered into or other thing done by a person while purporting to act as a director, or as the chief executive officer or deputy chief executive officer, of a financial institution or a holding company of a financial institution at any time after the person's appointment as such has been revoked under subsection (1) or (2) is void from the beginning.

(8) The giving of a notice under subsection (1) or (2) does not affect the rights of any party to a contract of employment or services under which a director, chief executive officer or deputy chief executive officer is employed by, or acts for or on behalf of or under an arrangement with, a financial institution or a holding company of a financial institution.

Part 4

Moving to Resolution

Division 1—Initiation of Resolution

25. Conditions for initiating resolution of financial institution

(1) A resolution authority may only initiate the resolution of a within scope financial institution if it is satisfied that conditions 1, 2 and 3 are met in the case of the financial institution.

(2) Condition 1 is that the financial institution has ceased, or is likely to cease, to be viable.

(3) Condition 2 is that there is no reasonable prospect that private sector action (outside of resolution) would result in the financial institution again becoming viable within a reasonable period.

(4) Condition 3 is that—

(a) the non-viability of the financial institution poses risks to the stability and effective working of the financial system of Hong Kong, including to the continued performance of critical financial functions; and

(b) resolution will avoid or mitigate those risks.

26. Effect on group members and jurisdictions may be considered

A resolution authority, in deciding whether to initiate the resolution of a within scope financial institution or which stabilization option to apply to such an institution, may consider the potential effect of the decision on—

(a) any other group company of the financial institution; and

(b) the stability and effective working of the financial system of any other jurisdiction.

27. Requirements for consultation and for liaising with regulatory bodies

(1) Before initiating the resolution of an entity, a resolution authority—

(a) must consult the Financial Secretary; and

(b) must liaise, as the resolution authority considers appropriate, with the Insurance Authority, the Monetary Authority or the Securities and Futures Commission for the purpose of securing coordination between the exercise of any specified power and the exercise of powers under this Ordinance with a view to facilitating the effective implementation of this Ordinance.

(2) In this section, a reference to the exercise of any specified power is a reference to the exercise by the Insurance Authority, the Monetary Authority or the Securities and Futures Commission, in a capacity other than as a resolution authority, of any power under the specified Ordinance that, if exercised, would have the effect of facilitating the effective implementation of this Ordinance.

(3) In this section—

specified Ordinance (《指明條例》)—

(a) in relation to the Insurance Authority, means the Insurance Companies Ordinance (Cap. 41);

(b) in relation to the Monetary Authority, means the Banking Ordinance (Cap. 155);

(c) in relation to the Securities and Futures Commission, means the Securities and Futures Ordinance (Cap. 571).

28. Holding companies

(1) A resolution authority may resolve a holding company of a within scope financial institution as if it were itself a within scope financial institution.

(2) Without limiting subsection (1), the resolution authority may apply any stabilization option to, or exercise any other power under this Ordinance in respect of, the holding company in the same way, and to the same extent, that it could if the holding company were a within scope financial institution being resolved by it.

(3) However, a resolution authority may only initiate the resolution of a holding company of a within scope financial institution if it is satisfied that—

(a) conditions 1, 2 and 3 are met in the case of the financial institution; and

(b) an orderly resolution of the financial institution that meets the resolution objectives can be more effectively achieved by resolving the holding company.

(4) Subsection (1) only authorizes the initiation of resolution of a holding company that is not a financial services holding company if the resolution authority is satisfied that, because of the way in which the group of companies is structured and operates, it is necessary to resolve that holding company to achieve an orderly resolution of the financial institution that meets the resolution objectives.

29. Affiliated operational entities

(1) A resolution authority may resolve an affiliated operational entity of a within scope financial institution as if it were itself a within scope financial institution.

(2) Without limiting subsection (1), the resolution authority may apply any stabilization option to, or exercise any other power under this Ordinance in respect of, the affiliated operational entity in the same way, and to the same extent, that it could if the affiliated operational entity were a within scope financial institution being resolved by it.

(3) However, a resolution authority may only initiate the resolution of an affiliated operational entity of a within scope financial institution if the circumstances set out in subsection (4) exist.

(4) The circumstances are—

(a) the power is being exercised to secure the continued provision by the affiliated operational entity of services that it provides, directly or indirectly, to the financial institution; and

(b) the resolution authority is satisfied as to the matters mentioned in subsection (5).

(5) The matters are—

(a) conditions 1, 2 and 3 are met in the case of the financial institution;

(b) the services that the affiliated operational entity provides are essential to the continued performance of critical financial functions in Hong Kong; and

(c) an orderly resolution of the financial institution, or of a holding company of that institution, that meets the resolution objectives cannot be achieved by any means (including the giving of a direction under section 81(3)) other than by resolving the affiliated operational entity.

30. Letters of mindedness

(1) A resolution authority must not initiate the resolution of a within scope financial institution, or of a holding company or affiliated operational entity of a within scope financial institution, without first complying with subsection (2).

(2) The resolution authority must issue to the financial institution or, in the case of a holding company or an affiliated operational entity, to both the holding company or affiliated operational entity and the financial institution, a letter in writing—

(a) stating that the resolution authority is minded to initiate the resolution of the financial institution, holding company or affiliated operational entity, as the case requires;

(b) stating that the resolution authority is satisfied that conditions 1, 2 and 3 are met in the case of the financial institution and specifying why it is so satisfied;

(c) if the letter relates to a holding company—

(i) stating that the resolution authority is satisfied that an orderly resolution of the financial institution that meets the resolution objectives can be more effectively achieved by resolving the holding company; and

(ii) if the holding company is not a financial services holding company, stating that the resolution authority is satisfied that, because of the way in which the group of companies is structured and operates, it is necessary to resolve the holding company to achieve an orderly resolution of the financial institution that meets the resolution objectives;

(d) if the letter relates to an affiliated operational entity—

(i) stating that the resolution authority is satisfied that the services that the affiliated operational entity provides are essential to the continued performance of critical financial functions in Hong Kong; and

(ii) stating that the resolution authority is satisfied that an orderly resolution of the financial institution, or of a holding company of the financial institution, that meets the resolution objectives cannot be achieved by any means (including the giving of a direction under section 81(3)) other than by resolving the affiliated operational entity;

(e) stating that the directors of the financial institution, holding company or affiliated operational entity may make representations to the resolution authority in relation to anything stated in the letter (specifying whether those representations may be made orally or in writing or both orally and in writing); and

(f) stating the period within which those representations may be made which must be one that the resolution authority considers reasonable having regard to—

(i) the circumstances of the financial institution; and

(ii) the urgency with which the resolution authority may need to initiate the resolution.

Division 2—Mandatory Reduction of Capital Instruments

31. Mandatory write off or conversion of capital instruments

(1) The resolution authority of a within scope financial institution that is an authorized institution may make one or more capital reduction instruments in respect of the financial institution if—

(a) conditions 1, 2 and 3 are met in the case of the financial institution;

(b) the resolution authority has decided to initiate the resolution of the financial institution; and

(c) the principal amount of any Additional Tier 1 capital instrument or Tier 2 capital instrument that is to be the subject of the capital reduction instrument has not been entirely written off or converted into ordinary shares in accordance with the point of non-viability provision applicable to it.

Note—

See section 35(1) for the requirement for a valuation to have been made before a capital reduction instrument is made.

(2) The making of a capital reduction instrument is to be regarded as a trigger event for the purposes of the point of non-viability provision applicable to any Additional Tier 1 capital instrument or Tier 2 capital instrument that is the subject of the capital reduction instrument.

(3) A capital reduction instrument may make any other provision for, or in connection with, any write off or conversion triggered by that or another capital reduction instrument including a provision for specified securities, or securities of a specified description, issued by a financial institution to be transferred to the resolution authority or a section 10 entity in order to facilitate the orderly resolution of the financial institution.

(4) If securities are transferred to a section 10 entity, the resolution authority must perform its functions under this Division with a view to ensuring that the securities are held by the section 10 entity only for so long as is, in the resolution authority's opinion, appropriate having regard to the resolution objectives.

(5) Securities held by a resolution authority or a section 10 entity (in that capacity and as a result of a capital reduction instrument) are to be held in accordance with the terms of the instrument that transferred them to the resolution authority or section 10 entity.

(6) If a capital reduction instrument is to be made in respect of a financial institution, it must be made before a stabilization option is applied to the institution.

(7) If a capital reduction instrument triggers the write off of the principal amount of an Additional Tier 1 capital instrument or Tier 2 capital instrument—

(a) the reduction of that amount must be permanent; and

(b) no liability remains to the holder of the Additional Tier 1 capital instrument or Tier 2 capital instrument under, or in connection with, so much of the principal amount of the instrument as is written off.

(8) If a capital reduction instrument triggers the conversion of an Additional Tier 1 capital instrument or Tier 2 capital instrument into ordinary shares, the new class 1 securities must, having regard to the resolution objectives, be issued without delay.

(9) No compensation is to be paid to the holder of an Additional Tier 1 capital instrument or Tier 2 capital instrument that is written off or converted under this section in accordance with the point of non-viability provision contained in the terms and conditions of the instrument, other than the provision of class 1 securities into which the instrument is converted.

32. Capital reduction instruments: supplementary matters

The following provisions apply in relation to a capital reduction instrument in the same way as they apply in relation to a bail-in instrument—

(a) section 62 (bail-in instrument may include directions);

(b) section 2 of Schedule 6 (procedure);

(c) section 3(1) and (4) of Schedule 6 (effect of bail-in instrument);

(d) section 4 of Schedule 6 (continuity);

(e) section 7 of Schedule 6 (instruments);

(f) section 8 of Schedule 6 (incidental provision etc.).

Part 5

Resolution

Division 1—Stabilization Options

Subdivision 1—Overview

33. Stabilization options

(1) There are 5 stabilization options that a resolution authority may apply to a within scope financial institution in resolving the institution.

Note—

See section 28 on the application of stabilization options to a holding company of a within scope financial institution and section 29 on the application of such options to an affiliated operational entity of such an institution.

(2) Those options are—

(a) transfer to a purchaser;

(b) transfer to a bridge institution;

(c) transfer to an asset management vehicle;

(d) bail-in;

(e) transfer to a TPO company.

(3) Consideration that is fair and reasonable in the circumstances, the determination of which is informed by a valuation made under section 35(1), is due to the transferor in respect of any transfer under a Part 5 instrument.

(4) Consideration mentioned in subsection (3) may be comprised of a monetary payment or take any other form, including the assumption of liabilities, as may be appropriate in the circumstances.

34. Application of stabilization options

(1) A resolution authority, having regard to the resolution objectives, may choose to apply to a within scope financial institution—

(a) one stabilization option at a time;

(b) a combination of more than one stabilization option at the same time; or

(c) 2 or more stabilization options sequentially.

(2) Without limiting subsection (1)(b), different stabilization options may be applied at the same time to different parts of the business of a financial institution.

(3) A resolution authority may choose not to apply a stabilization option to any part of the business of a financial institution while applying one or more to the other part or parts.

35. Valuation to be made

(1) Subject to subsection (2), before a resolution authority applies a stabilization option to, or makes a capital reduction instrument in respect of, a within scope financial institution, it must make a valuation for informing any decisions to be made by the resolution authority as to any of the following matters—

(a) whether the conditions for applying a stabilization option or making a capital reduction instrument are satisfied;

(b) if the conditions for applying a stabilization option are satisfied, which stabilization option to apply;

(c) the extent to which—

(i) any Additional Tier 1 capital instrument or Tier 2 capital instrument should be written off or converted through the making of a capital reduction instrument; or

(ii) any liabilities or securities eligible to be the subject of a bail-in provision should be cancelled, modified, converted or otherwise dealt with through the making of a bail-in provision in a bail-in instrument;

(d) what is to be transferred by a securities transfer instrument or property transfer instrument;

(e) the value of any consideration due in respect of whatever is so transferred.

(2) If a valuation was made before a resolution authority made a capital reduction instrument in respect of a within scope financial institution, it may apply a stabilization option without making a fresh valuation.

36. Nature of valuation

A valuation made under section 35(1) must—

(a) be fair in all the circumstances, be based on prudent and realistic assumptions, including assumptions as to rates of default and severity of losses, and take into account—

(i) if appropriate, available information from which a market price for assets and liabilities could be derived; and

(ii) accounting principles to the extent that they are relevant in assisting in the making of a valuation that is suitable for the purpose for which it is being made;

(b) not assume that any financial support or assistance will be provided, directly or indirectly, to the financial institution by the Government, a public body or a public officer, other than in the ordinary course of business;

(c) take account of the fact that expenses incurred by the resolution authority in connection with the application of a stabilization option to the financial institution may be recovered from the financial institution; and

(d) take account of the fact that, if the application of a stabilization option to the financial institution includes the use of resolution funds for a purpose mentioned in section 178(4)(a) or (b), interest or fees may be charged in respect of the funds used and recovered from the financial institution.

37. Section 10 entity may assist in making valuation

(1) A resolution authority may appoint a section 10 entity to assist in the making of a valuation under section 35(1).

(2) However, a section 10 entity that is appointed must be one that the resolution authority is satisfied—

(a) has the expertise, experience and resources that are, in the opinion of the resolution authority, necessary for the entity to be able to assist in the making of a valuation under section 35(1); and

(b) does not have an actual or material interest in common or in conflict with either of the following that could influence, or be reasonably perceived to influence, the entity's judgement in assisting in the making of a valuation under section 35(1) in relation to the entity concerned—

(i) the entity concerned;

(ii) an entity that is a member of the same group of companies as the entity concerned.

(3) The acts of an entity acting as a section 10 entity are valid despite the fact that it is afterwards discovered that there was a defect in the appointment of the section 10 entity, other than a defect arising because the section 10 entity did not meet the criteria specified in subsection (2).

Subdivision 2—Transfer to Purchaser

38. Application of Subdivision

This Subdivision deals with the stabilization option mentioned in section 33(2)(a) (transfer to a purchaser).

39. Transfer instruments

(1) A resolution authority may transfer securities issued by a within scope financial institution to a purchaser by making one or more securities transfer instruments.

(2) A resolution authority may transfer assets, rights or liabilities of a within scope financial institution to a purchaser by making one or more property transfer instruments.

(3) Schedule 3 has effect with respect to securities transfer instruments under this Subdivision.

(4) Schedule 4 has effect with respect to property transfer instruments under this Subdivision.

40. Report

(1) This section applies if a resolution authority transfers to a purchaser under section 39 any securities issued by, or any assets, rights or liabilities of, a within scope financial institution.

(2) The resolution authority must report to the Financial Secretary about the transfer.

(3) A report under subsection (2) must be made as soon as practicable after the transfer is completed.

(4) The Financial Secretary must cause a copy of each report under subsection (2) to be laid on the table of the Legislative Council.

Subdivision 3—Transfer to Bridge Institution

41. Application of Subdivision

This Subdivision deals with the stabilization option mentioned in section 33(2)(b) (transfer to a bridge institution).

42. Transfer instruments

(1) A resolution authority may transfer securities issued by a within scope financial institution to a bridge institution by making one or more securities transfer instruments.

(2) A resolution authority may transfer assets, rights or liabilities of a within scope financial institution to a bridge institution by making one or more property transfer instruments.

(3) Schedule 3 has effect with respect to securities transfer instruments under this Subdivision.

(4) Schedule 4 has effect with respect to property transfer instruments under this Subdivision.

43. Bridge institution

A bridge institution is a company that is—

(a) incorporated under the Companies Ordinance (Cap. 622);

(b) limited by shares;

(c) wholly or partially owned by the Government; and

(d) created for receiving a transfer, and effecting a timely disposal, under this Subdivision.

44. Onward bridge institution

(1) This section applies if any securities issued by, or any assets, rights or liabilities of, a within scope financial institution are first transferred by a securities transfer instrument or a property transfer instrument to a bridge institution and later transferred (whether or not by the exercise of a power under this Part) to another company that meets the requirements of section 43.

(2) Any company that meets the requirements of section 43 to which the securities, assets, rights or liabilities are transferred (including through a series of transactions from one such company to another) is an onward bridge institution for the purposes of this Ordinance.

45. Bridge institution—onward transfer

(1) This section applies if a resolution authority has made a securities transfer instrument or a property transfer instrument under section 42 (***original instrument***) in respect of a bridge institution.

(2) The resolution authority may—

(a) by making one or more securities transfer instruments, transfer to another entity—

(i) securities issued by the bridge institution; or

(ii) securities issued by a within scope financial institution and held by the bridge institution; or

(b) by making one or more property transfer instruments, transfer assets, rights or liabilities of the bridge institution (whether accruing or arising before or after the original instrument is made) to another entity.

(3) A securities transfer instrument may relate to securities held by the bridge institution whether or not they were transferred to that institution by an instrument made under this Subdivision.

(4) A property transfer instrument may relate to assets, rights or liabilities of the bridge institution whether or not they were transferred to that institution by an instrument made under this Subdivision.

46. Report

(1) If a resolution authority transfers to a bridge institution any securities issued by, or any assets, rights or liabilities of, a within scope financial institution, the resolution authority must report to the Financial Secretary about—

(a) the activities and audited financial position of the bridge institution; and

(b) the progress that has been made towards transferring to a purchaser securities issued by, or assets, rights or liabilities of, the bridge institution.

(2) The first report under subsection (1) must be made as soon as practicable after audited financial statements are available for the year in which a transfer is first made to the bridge institution.

(3) A report under subsection (1) must be made for each subsequent year after the year mentioned in subsection (2).

(4) The reporting obligation under subsection (3) does not apply in respect of any year during which the bridge institution does not hold any assets or rights, or have any liabilities, mentioned in subsection (1).

(5) The Financial Secretary must cause a copy of each report under subsection (1) to be laid on the table of the Legislative Council.

47. Winding up of bridge institution

(1) A resolution authority must, without delay, take all necessary steps to wind up a bridge institution if—

(a) all, or substantially all, of its assets, rights and liabilities have been transferred to a third party; or

(b) following a transfer to the bridge institution under this Subdivision, no further transfer to it is made under this Subdivision during the applicable post-transfer period.

(2) However, subsection (1) does not apply if the bridge institution has ceased to be wholly owned by the Government.

(3) After consultation with the Financial Secretary, the resolution authority may extend (or further extend) the applicable post-transfer period by one year if it is satisfied that the extension—

(a) would support an outcome mentioned in subsection (1)(a) or (2); or

(b) is necessary to ensure that an orderly resolution of the within scope financial institution that meets the resolution objectives can be completed.

(4) In this section—

applicable post-transfer period (適用的後轉讓期) means the period of 2 years beginning on the date of the last transfer made to the bridge institution under this Subdivision, subject to any extension under subsection (3).

48. Disposal of proceeds

(1) This section applies to any money received by the Government as a shareholder of a bridge institution.

(2) The money must be paid into the resolution funding account.

Subdivision 4—Transfer to Asset Management Vehicle

49. Application of Subdivision

This Subdivision deals with the stabilization option mentioned in section 33(2)(c) (transfer to an asset management vehicle).

50. Property transfer instruments

(1) A resolution authority may transfer assets, rights or liabilities to an asset management vehicle by making one or more property transfer instruments.

(2) The assets, rights or liabilities transferred may be those of—

(a) a within scope financial institution; or

(b) a bridge institution.

(3) Schedule 4 has effect with respect to property transfer instruments under this Subdivision.

51. Asset management vehicle

An asset management vehicle is a company that is—

(a) incorporated under the Companies Ordinance (Cap. 622);

(b) limited by shares;

(c) wholly or partially owned by the Government; and

(d) created for receiving some or all of the assets, rights and liabilities of a within scope financial institution or a bridge institution.

52. Management of assets by asset management vehicle

An asset management vehicle must manage the assets transferred to it with a view to maximizing their value through eventual sale or orderly wind down.

53. Asset management vehicle securities transfer

(1) This section applies if a resolution authority has made a property transfer instrument under section 50 in respect of an asset management vehicle.

(2) The resolution authority may, by making one or more securities transfer instruments, transfer securities issued by the asset management vehicle to another entity.

(3) Schedule 3 has effect with respect to securities transfer instruments under this Subdivision.

54. Onward property transfer from asset management vehicle

(1) This section applies if a resolution authority has made a property transfer instrument under section 50 (***original instrument***) in respect of an asset management vehicle.

(2) The resolution authority may, by making one or more property transfer instruments, transfer assets, rights or liabilities of the asset management vehicle (whether accruing or arising before or after the original instrument is made) to another entity.

(3) A property transfer instrument may relate to assets, rights or liabilities of an asset management vehicle whether or not they were transferred to that vehicle by an instrument made under this Subdivision.

55. Report

(1) If a resolution authority transfers to an asset management vehicle under section 50 any assets, rights or liabilities of a within scope financial institution or of a bridge institution, the resolution authority must report to the Financial Secretary about—

(a) the activities and audited financial position of the asset management vehicle; and

(b) the progress that has been made towards maximizing the value of the assets transferred to it through eventual sale or orderly wind down.

(2) The first report under subsection (1) must be made as soon as practicable after audited financial statements are available for the year in which a transfer is first made to the asset management vehicle.

(3) A report under subsection (1) must be made for each subsequent year after the year mentioned in subsection (2).

(4) The reporting obligation under subsection (3) does not apply in respect of any year during which the asset management vehicle does not hold any assets or rights, or have any liabilities, mentioned in subsection (1).

(5) The Financial Secretary must cause a copy of each report under subsection (1) to be laid on the table of the Legislative Council.

56. Disposal of proceeds

(1) This section applies to any money received by the Government as a shareholder of an asset management vehicle.

(2) The money must be paid into the resolution funding account.

Subdivision 5—Bail-in

57. Application of Subdivision

This Subdivision deals with the stabilization option mentioned in section 33(2)(d) (bail-in).

58. Bail-in instruments

(1) A resolution authority may make one or more bail-in instruments in respect of a within scope financial institution.

(2) A bail-in instrument may—

(a) contain a bail-in provision; or

(b) make any other provision for, or in connection with, any bail-in provision made by that or another instrument.

(3) A bail-in provision, in relation to a within scope financial institution, is any of the following (or any combination of the following)—

(a) a provision for, or in connection with, cancelling a liability owed by the financial institution;

(b) a provision for, or in connection with, modifying, or changing the form of, a liability owed by the financial institution;

(c) a provision that an instrument under which the financial institution has a liability is to have effect as if a specified right had been exercised under it;

(d) a provision for, or in connection with, cancelling or modifying an instrument under which the financial institution, or a group company of the financial institution, has a liability that the resolution authority considers it appropriate to make in consequence of any provision mentioned in paragraph (a), (b) or (c) that—

(i) is made in the same bail-in instrument; or

(ii) has been made in another bail-in instrument in respect of the financial institution.

(4) A power to make a bail-in provision may not be exercised in respect of any excluded liability.

(5) For the purposes of subsection (3)—

(a) the reference to cancelling a liability owed by the financial institution includes cancelling an instrument under which the financial institution has a liability;

(b) the reference to modifying a liability owed by the financial institution includes modifying the terms (or the effect of the terms) of an instrument under which the financial institution has a liability;

(c) the reference to changing the form of a liability owed by the financial institution includes—

(i) converting an instrument under which the financial institution owes a liability from one form or class to a form or class of any other kind;

(ii) replacing such an instrument with another instrument of a form or class of any other kind;

(iii) creating a new security (of any form or class) in connection with the modification of such an instrument; and

(iv) converting those liabilities into securities issued by a bridge institution or a holding company of the financial institution that is incorporated in Hong Kong.

(6) When exercising a power to make a bail-in provision, a resolution authority—

(a) must have regard to the winding up hierarchy principles; and

(b) must have regard to the valuation made under section 35(1) for assessing the extent to which any of the following things should be done for the purpose mentioned in subsection (7)—

(i) liabilities eligible to be the subject of a bail-in provision are cancelled, modified or changed in form;

(ii) securities are transferred, cancelled, modified or converted from one form or class into another.

(7) The purpose is to absorb the losses incurred, or reasonably expected to be incurred, by the relevant entity and to provide a measure of capital for it so as to enable it to carry on business for a reasonable period and maintain market confidence in it.

(8) Nothing in subsection (6) or (7) affects subsection (4).

(9) In subsection (4)—

excluded liability (獲豁除負債) means—

(a) a liability listed in Schedule 5; or

(b) a liability that the resolution authority has excluded under section 59 from the application of a bail-in provision.

(10) Schedule 6 has effect with respect to bail-in instruments.

59. Power to exclude additional liabilities

(1) A resolution authority may, in a bail-in instrument, exclude a liability or class of liability of a within scope financial institution, wholly or partly, from the application of any bail-in provision if the resolution authority is of the opinion that the exclusion is justified on one or more of the following grounds—

(a) that it is not reasonably possible to effectively apply the provision to the liability or class within a reasonable time;

(b) that the exclusion is necessary and proportionate to meet the resolution objectives;

(c) that the application of the provision in relation to the liability or class would cause a reduction in its value such that the losses borne by other creditors would be higher than if the liability or class were excluded.

(2) When deciding whether to exclude under subsection (1) a liability or class of liability from the application of a bail-in provision, a resolution authority must have regard to the winding up hierarchy principles.

60. Rules relating to liabilities

(1) For ensuring the effective operation of a bail-in provision in relation to a liability owed by a within scope financial institution, a resolution authority may make rules that impose a requirement on the within scope financial institution or a holding company of a within scope financial institution to ensure that the terms and conditions of a contract creating the liability contain a provision to the effect that the parties to the contract agree that the liability is eligible to be the subject of a bail-in provision.

(2) The rules may—

(a) specify the liabilities, or classes of liabilities, to which the requirement applies;

(b) specify the within scope financial institutions or holding companies, or classes of within scope financial institutions or holding companies, bound by the requirement;

(c) require a within scope financial institution or holding company bound by the requirement to provide to the resolution authority an opinion from counsel or a solicitor that any provision included by it in contracts in compliance with the rules is legally enforceable; or

(d) include incidental, consequential or transitional provisions.

61. Provision of bail-in instrument in relation to securities

(1) A bail-in instrument may—

(a) provide for securities issued by a within scope financial institution to be transferred to the resolution authority, a section 10 entity or any other entity;

(b) make any other provision for, or in connection with, the transfer of securities issued by the financial institution (whether or not the transfer was the subject of that instrument);

(c) cancel or modify any securities issued by the financial institution;

(d) convert any securities issued by the financial institution from one form or class into another; or

(e) make provision with respect to rights attaching to securities issued by the financial institution.

(2) The reference in subsection (1)(d) to converting securities from one form or class into another includes creating a new security in connection with the modification of an existing security.

(3) The provision that may be made under subsection (1)(e) includes—

(a) provision that specified rights attaching to securities are to be treated as having been exercised;

(b) provision that the resolution authority, or a section 10 entity, is to be treated as authorized to exercise those rights; and

(c) provision that those rights may not be exercised for a period specified in the instrument.

(4) The provision made under subsection (1) may relate to—

(a) specified securities; or

(b) securities of a specified description.

(5) If securities are transferred to a section 10 entity, the resolution authority must perform its functions under this Subdivision with a view to ensuring that the securities are held by the section 10 entity only for so long as is, in the resolution authority's opinion, appropriate having regard to the resolution objectives.

(6) Securities held by a resolution authority or a section 10 entity (in that capacity, and as a result of a bail-in instrument) are to be held in accordance with the terms of the instrument that transfers them to the resolution authority or section 10 entity.

62. Bail-in instrument may include directions

(1) A bail-in instrument may include directions (whether general or specific) to one or more directors of the financial institution.

(2) A director is not to be regarded as failing to discharge any duty owed to any person because of any act done or omitted to be done in good faith in compliance with, or in giving effect to, a direction.

(3) A director is immune from liability in damages in respect of any act done or omitted to be done in good faith by the director in compliance with, or in giving effect to, a direction.

(4) A director who, without reasonable excuse, fails to comply with a direction within the period of time specified in it commits an offence and is liable—

(a) on conviction on indictment to a fine of $2,000,000 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at level 6 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues.

63. Business reorganization plans

(1) A resolution authority must include in at least one bail-in instrument made by it a requirement that one or more directors of the financial institution—

(a) prepare a business reorganization plan with respect to the financial institution; and

(b) submit it to the resolution authority within the period allowed under the instrument.

(2) A bail-in instrument containing a requirement under subsection (1) may—

(a) include a requirement that the financial institution engage appropriate professional advisors to assist in the preparation of the business reorganization plan;

(b) specify further matters (in addition to those mentioned in the definition of ***business reorganization plan*** in subsection (4)) that must be dealt with in the plan;

(c) make provision about the timing of actions to be taken in connection with the making and approval of the plan; or

(d) enable any provision that the resolution authority has power under paragraph (a), (b) or (c) to make in the instrument to be made instead in an agreement between the resolution authority and a director of the financial institution required to prepare the plan.

(3) If a director of the financial institution has submitted a business reorganization plan to a resolution authority under subsection (1) (or has re-submitted a plan under paragraph (b)), the resolution authority may—

(a) approve the plan; or

(b) require the director to amend it in a specified manner and re-submit the amended plan within a specified period.

(4) In this section—

business reorganization plan (業務重組計劃) means a plan that includes—

(a) an assessment of the factors that caused conditions 1 and 2 to be met in the case of the financial institution;

(b) a description of the measures to be adopted with a view to—

(i) restoring, and maintaining in the long term, the viability of the financial institution; and

(ii) mitigating the risks posed by the non-viability of the financial institution to the stability and effective working of the financial system of Hong Kong; and

(c) a timetable for the implementation of those measures.

64. Onward transfer of securities

(1) This section applies if a resolution authority has made a bail-in instrument (***original instrument***) providing for securities issued by a within scope financial institution to be transferred to any entity.

(2) The resolution authority may make one or more onward transfer bail-in instruments.

(3) An onward transfer bail-in instrument is a bail-in instrument that—

(a) provides for the transfer of—

(i) securities that were issued by the financial institution before the original instrument is made and have been transferred by the original instrument; or

(ii) securities that were issued by the financial institution after the original instrument is made; or

(b) makes any other provision for, or in connection with, the transfer of securities issued by the financial institution (whether or not the transfer was the subject of that instrument).

(4) An onward transfer bail-in instrument may not transfer securities to the transferor under the original instrument.

(5) Except as otherwise provided by this section, Schedule 6 applies with respect to an onward transfer bail-in instrument in the same way as it applies with respect to any other bail-in instrument.

65. Report

(1) This section applies if a resolution authority makes a bail-in instrument under section 58(1) containing a bail-in provision.

(2) The resolution authority must report to the Financial Secretary stating the reasons why that provision was made in the case of the liabilities concerned.

(3) If the provision departs from the winding up hierarchy principles, the report must state the reasons why it does so.

(4) The report must be made as soon as practicable after the making of the instrument to which it relates.

(5) The Financial Secretary must cause a copy of each report under subsection (2) to be laid on the table of the Legislative Council.

Subdivision 6—Transfer to TPO Company

66. Application of Subdivision

This Subdivision deals with the stabilization option mentioned in section 33(2)(e) (transfer to a TPO company).

67. Transfer of securities to TPO company

A resolution authority may transfer securities issued by a within scope financial institution to a TPO company by making one or more securities transfer instruments.

68. Special limitation on option

A resolution authority may only provide for a transfer of securities issued by a within scope financial institution to a TPO company if—

(a) having considered all the other stabilization options, it is satisfied that an orderly resolution of the financial institution that meets the resolution objectives is most appropriately achieved by the transfer; and

(b) the Financial Secretary has approved the transfer.

69. TPO company

A temporary public ownership company is a company that is—

(a) incorporated under the Companies Ordinance (Cap. 622);

(b) limited by shares;

(c) wholly owned by the Government; and

(d) created for receiving a transfer under this Subdivision.

70. TPO company—onward transfer

(1) This section applies if a resolution authority has made a securities transfer instrument under section 67 in respect of a TPO company.

(2) With the approval of the Financial Secretary, the resolution authority may—

(a) by making one or more securities transfer instruments, transfer to another entity—

(i) securities issued by the TPO company; or

(ii) securities issued by the financial institution and held by the TPO company; or

(b) by making one or more property transfer instruments, transfer assets, rights or liabilities of the TPO company to another entity.

71. Transfer instruments

(1) Schedule 3 has effect with respect to securities transfer instruments under this Subdivision.

(2) Schedule 4 has effect with respect to property transfer instruments under this Subdivision.

72. Report

(1) If a resolution authority transfers to a TPO company under section 67 securities issued by a within scope financial institution, the resolution authority must report to the Financial Secretary about—

(a) the activities and audited financial position of the TPO company; and

(b) the progress that has been made towards transferring the TPO company, or its business or the business of a subsidiary of it, to the private sector.

(2) The first report under subsection (1) must be made as soon as practicable after audited financial statements are available for the year in which the transfer is made to the TPO company.

(3) A report under subsection (1) must be made for each subsequent year after the year mentioned in subsection (2).

(4) The reporting obligation under subsection (3) does not apply in respect of any year during which the TPO company does not hold any securities mentioned in subsection (1).

(5) The Financial Secretary must cause a copy of each report under subsection (1) to be laid on the table of the Legislative Council.

73. Disposal of proceeds

(1) This section applies to any money received by the Government as a shareholder of a TPO company.

(2) The money must be paid into the resolution funding account.

Subdivision 7—Protected Arrangements

74. Interpretation

In this Subdivision—

arrangement (安排) includes an arrangement that—

(a) is formed wholly or partly by one or more contracts or trusts;

(b) arises under, or is wholly or partly governed by, a non-Hong Kong law;

(c) arises, wholly or partly, automatically as a matter of law;

(d) involves any number of parties; or

(e) operates partly by reference to another arrangement between parties;

clearing and settlement systems arrangement (結算及交收系統安排) means an arrangement governed by the rules and directions relating to participation in the clearing and settlement of transactions within a financial market infrastructure;

netting arrangement (淨額結算安排) means an arrangement under which a number of claims or obligations can be converted into a net claim or obligation;

partial property transfer (局部財產轉讓) means a transfer by a property transfer instrument of some, but not all, of the assets, rights and liabilities of the transferor;

protected arrangement (受保障安排) means a clearing and settlement systems arrangement, a netting arrangement, a secured arrangement, a set-off arrangement, a structured finance arrangement or a title transfer arrangement;

regulated Part 5 instrument (受規管第5部文書) means a Part 5 instrument that—

(a) results in a partial property transfer being effected; or

(b) contains a bail-in provision;

secured arrangement (抵押保證安排) means an arrangement under which a person acquires, by way of security, an actual or contingent interest in the property of another;

set-off arrangement (抵銷安排) means an arrangement under which 2 or more debts, claims or obligations can be set off against each other;

structured finance arrangement (結構式金融安排) means an arrangement under which a person creates and issues an instrument under which some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to the price, value or other parameters, or changes in the price, value or other parameters, of financial assets or the occurrence or non-occurrence of a specified event and includes—

(a) asset-backed securities;

(b) securitizations;

(c) asset-backed commercial paper;

(d) residential and commercial mortgage-backed securities;

(e) collateralized debt obligations; and

(f) covered bonds;

title transfer arrangement (所有權轉讓安排) means an arrangement under which a person transfers assets to another person on terms providing for the other person to transfer assets if specified obligations are discharged and includes—

(a) a repurchase or reverse repurchase transaction; and

(b) a stock borrowing or lending arrangement.

75. Regulations relating to protected arrangements

(1) The Secretary for Financial Services and the Treasury may, for safeguarding the economic effect of a protected arrangement in connection with the making of a regulated Part 5 instrument, make regulations—

(a) prescribing requirements to be complied with by a resolution authority in making a regulated Part 5 instrument; or

(b) for connected purposes.

(2) Without limiting subsection (1), regulations made under that subsection may—

(a) impose conditions on the exercise of a power to make a regulated Part 5 instrument;

(b) require a regulated Part 5 instrument to include a specified provision, or a provision to a specified effect, relating to protected arrangements;

(c) provide for rights, assets, liabilities, claims or other matters to be classified not according to how they are described by the relevant parties but according to how they are treated, or intended to be treated, in commercial practice;

(d) require a resolution authority, in making a regulated Part 5 instrument that results in a partial property transfer being effected, to seek to ensure that the instrument does not have the effect of adversely affecting a party (other than the transferor) to a protected arrangement by separating or otherwise affecting the constituent parts of the arrangement;

(e) require a resolution authority, in making a regulated Part 5 instrument that contains a bail-in provision, to seek to ensure that the instrument does not have the effect of cancelling, modifying or changing the form of a liability covered by a protected arrangement in an amount in excess of the net debt, claim or obligation under the arrangement;

(f) specify remedial action to be taken by a resolution authority, or provide for other consequences to arise, if a regulated Part 5 instrument has an effect mentioned in paragraph (d) or (e); or

(g) make provision for determining the scope of coverage of a protected arrangement, taking into account the effect on the ability of a resolution authority to achieve the orderly resolution of an entity.

(3) Regulations made under subsection (1) may—

(a) apply to protected arrangements generally or only to protected arrangements of a specified class;

(b) specify principles related to protected arrangements to which a resolution authority must have regard in making a regulated Part 5 instrument; or

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

Subdivision 8—Deferral of Requirements

76. Deferral of requirements under Banking Ordinance

(1) This section has effect in relation to an application made to the Monetary Authority under section 15 of the Banking Ordinance (Cap. 155) by a bridge institution to which assets, rights or liabilities of a within scope financial institution are transferred under a Part 5 instrument.

(2) The Monetary Authority may, on any conditions that the Monetary Authority considers appropriate, grant a deferral of the application of section 16(2) of the Banking Ordinance (Cap. 155) (to the extent that it applies the criteria specified in paragraphs 6 and 7 of the Seventh Schedule to that Ordinance) to the application made by the bridge institution.

(3) The Monetary Authority may grant a deferral under subsection (2) for a period of 12 months or any shorter period that the Monetary Authority may determine.

(4) The Monetary Authority may at any time, by notice in writing served on the bridge institution—

(a) attach to the grant of a deferral under subsection (2) any conditions that the Monetary Authority considers appropriate;

(b) amend as the Monetary Authority considers appropriate any condition already attached to the grant of a deferral under subsection (2); or

(c) cancel any condition already attached to the grant of a deferral under subsection (2).

(5) The attachment, amendment or cancellation of a condition under subsection (4) takes effect on the service of the notice on the bridge institution or at the later time specified in the notice.

77. Deferral of requirements under Securities and Futures Ordinance

(1) Subsection (2) has effect in relation to an application to which section 116 or 119 of the Securities and Futures Ordinance (Cap. 571) applies that is made to the Securities and Futures Commission by any of the following—

(a) a bridge institution to which assets, rights or liabilities of a within scope financial institution are transferred under a Part 5 instrument;

(b) an asset management vehicle to which assets, rights or liabilities of a within scope financial institution are transferred under a Part 5 instrument.

(2) The Securities and Futures Commission may, on any conditions that the Securities and Futures Commission considers appropriate, grant a deferral of the application of any of the provisions mentioned in subsection (1) to the application made by the bridge institution or asset management vehicle.

(3) Subsection (4) has effect in relation to section 118 or 146 of the Securities and Futures Ordinance (Cap. 571) or rules made under section 145(1) of that Ordinance as applying to any of the following—

(a) a bridge institution to which assets, rights or liabilities of a within scope financial institution are transferred under a Part 5 instrument;

(b) an asset management vehicle to which assets, rights or liabilities of a within scope financial institution are transferred under a Part 5 instrument.

(4) The Securities and Futures Commission may, on any conditions that the Securities and Futures Commission considers appropriate, grant a deferral of the application of all or any of the provisions mentioned in subsection (3) to the bridge institution or asset management vehicle.

(5) The Securities and Futures Commission may grant a deferral under subsection (2) or (4) for a period of 12 months or any shorter period that the Securities and Futures Commission may determine.

(6) The Securities and Futures Commission may at any time, by notice in writing served on the bridge institution or asset management vehicle—

(a) attach to the grant of a deferral under subsection (2) or (4) any conditions that the Securities and Futures Commission considers appropriate;

(b) amend as the Securities and Futures Commission considers appropriate any condition already attached to the grant of a deferral under subsection (2) or (4); or

(c) cancel any condition already attached to the grant of a deferral under subsection (2) or (4).

(7) The attachment, amendment or cancellation of a condition under subsection (6) takes effect on the service of the notice on the bridge institution or asset management vehicle or at the later time specified in the notice.

78. Deferral of requirements under section 8 of Insurance Companies Ordinance

(1) This section has effect in relation to an application made to the Insurance Authority under section 7 of the Insurance Companies Ordinance (Cap. 41) by a bridge institution to which assets, rights or liabilities of a within scope financial institution are transferred under a Part 5 instrument.

(2) The Insurance Authority may, on any conditions that the Insurance Authority considers appropriate, grant a deferral of the application of all or any of the following provisions of the Insurance Companies Ordinance (Cap. 41) to the application made by the bridge institution—

(a) section 8(1)(b)(i) to the extent that it relates to section 8(3);

(b) section 8(1)(b)(ii);

(c) section 8(3).

(3) The Insurance Authority may grant a deferral under subsection (2) for a period of 12 months or any shorter period that the Insurance Authority may determine.

(4) The Insurance Authority may at any time, by notice in writing served on the bridge institution—

(a) attach to the grant of a deferral under subsection (2) any conditions that the Insurance Authority considers appropriate;

(b) amend as the Insurance Authority considers appropriate any condition already attached to the grant of a deferral under subsection (2); or

(c) cancel any condition already attached to the grant of a deferral under subsection (2).

(5) The attachment, amendment or cancellation of a condition under subsection (4) takes effect on the service of the notice on the bridge institution or at the later time specified in the notice.

Division 2—Power to Direct Continued Performance of Essential Services

79. Power to direct residual financial institution

(1) This section applies in relation to a within scope financial institution some, but not all, of the assets, rights or liabilities of which have been transferred under Division 1 to a purchaser, a bridge institution or an asset management vehicle.

(2) The resolution authority of the financial institution may serve a notice under subsection (3) if of the opinion that doing so is reasonably required for facilitating the orderly resolution of the financial institution in accordance with the resolution objectives.

(3) The resolution authority may, by notice in writing served on the financial institution, direct the financial institution to continue to provide, on reasonable commercial terms, to another entity to which any assets, rights or liabilities of the financial institution have been transferred in the application of a stabilization option, services that are essential to the continued performance of critical financial functions in Hong Kong.

(4) A resolution authority must revoke a notice served by it under subsection (3) as soon as practicable after it ceases to be of the opinion mentioned in subsection (2).

(5) A financial institution that, without reasonable excuse, fails to comply with a notice served on it under subsection (3) commits an offence and is liable—

(a) on conviction on indictment to a fine of $2,000,000 and, in the case of a continuing offence, to a further fine at level 6 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues.

(6) If a financial institution commits an offence under subsection (5), an officer of the institution also commits an offence under that subsection if the officer—

(a) authorized or permitted the commission of the offence by the institution; or

(b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the institution.

(7) An officer who commits an offence under subsection (5) is liable—

(a) on conviction on indictment to a fine of $2,000,000 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at level 6 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues.

(8) An officer of a financial institution may commit an offence under subsection (5) whether or not the financial institution has been prosecuted for, or found guilty of, an offence under that subsection.

80. Effect of direction under section 79

(1) A notice may be served under section 79(3) on a within scope financial institution whether or not winding up proceedings have been commenced in relation to it.

(2) The service of a notice on a within scope financial institution under section 79(3) does not prevent the commencement or continuation of winding up proceedings in relation to it.

(3) However, the winding up of the within scope financial institution (whether the winding up proceedings were commenced before, on or after the service of the notice) may not be concluded at any time while the notice is still in force.

(4) Winding up proceedings commenced in relation to a within scope financial institution but not concluded are not to affect the provision of services in accordance with a notice served on the financial institution under section 79(3).

(5) If the liquidator of a within scope financial institution wishes to conclude the winding up of the financial institution, the liquidator may serve a notice in writing on the resolution authority of the financial institution stating that fact.

(6) On the expiry of a period of 6 months after the service of a notice under subsection (5) on the resolution authority, the notice served by the resolution authority under section 79(3) on the financial institution expires by force of this subsection.

81. Power to direct affiliated operational entity

(1) This section applies to services that are essential to the continued performance of critical financial functions in Hong Kong and that an affiliated operational entity of a within scope financial institution provided to the financial institution (***affiliated financial institution***) immediately before the initiation of resolution of the affiliated financial institution.

(2) The resolution authority of the affiliated financial institution may serve a notice under subsection (3) if of the opinion that doing so is reasonably required for facilitating the orderly resolution of the affiliated financial institution in accordance with the resolution objectives.

(3) The resolution authority may, by notice in writing served on the affiliated operational entity, direct the entity—

(a) to continue to provide the services, or a specified part of the services, to the affiliated financial institution; or

(b) to provide the services, or a specified part of the services, to another entity to which all or any part of the assets, rights or liabilities of the affiliated financial institution have been transferred in the application of a stabilization option.

(4) A notice under subsection (3) must specify the terms on which the services are to be provided.

(5) Subject to subsection (6), the terms specified in the notice must be the same as, or substantially similar to, those on which the services were provided to the affiliated financial institution immediately before the initiation of resolution of that financial institution.

(6) However, in either of the circumstances mentioned in subsection (7), the resolution authority may specify reasonable commercial terms for the provision of the services.

(7) The circumstances are—

(a) the resolution authority is of the opinion that the terms mentioned in subsection (5) are unconscionable; and

(b) terms for the provision of the services to the affiliated financial institution immediately before the initiation of resolution of that financial institution had not been agreed.

(8) A resolution authority must revoke a notice served by it under subsection (3) as soon as practicable after it ceases to be of the opinion mentioned in subsection (2).

82. Offences related to directions

(1) An affiliated operational entity that, without reasonable excuse, fails to comply with a notice served on it under section 81(3) commits an offence and is liable—

(a) on conviction on indictment to a fine of $2,000,000 and, in the case of a continuing offence, to a further fine at level 6 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues.

(2) If an affiliated operational entity commits an offence under subsection (1), an officer of the entity also commits an offence under that subsection if the officer—

(a) authorized or permitted the commission of the offence by the entity; or

(b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the entity.

(3) An officer who commits an offence under subsection (1) is liable—

(a) on conviction on indictment to a fine of $2,000,000 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at level 6 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues.

(4) An officer of an affiliated operational entity may commit an offence under subsection (1) whether or not the entity has been prosecuted for, or found guilty of, an offence under that subsection.

Division 3—Suspension of Obligations

83. Suspension of obligations

(1) The resolution authority of a within scope financial institution may, by way of provision in a Part 5 instrument, suspend for a specified period obligations to make a payment or delivery under a contract to which the financial institution, or a subsidiary of the financial institution, is a party.

(2) Despite subsection (1), if an entity in resolution is a holding company of a within scope financial institution, the resolution authority may exercise the power under subsection (1) in relation to the following contracts only—

(a) a contract to which the holding company is a party;

(b) a contract to which the financial institution or a subsidiary of the financial institution is a party.

(3) The resolution authority must have regard to the impact a suspension might have on the orderly functioning of the financial market in Hong Kong before exercising a power under subsection (1).

(4) A suspension imposed under subsection (1)—

(a) begins when the instrument providing for the suspension is first published;

(b) ends at the end of the period of suspension specified in that instrument, being no later than the expiry of the first business day following the day on which that instrument is published; and

(c) subject to subsection (6), suspends all obligations of any party to the contract in question to make a payment or delivery under the contract.

(5) During the suspension period a creditor (whether secured or unsecured) may not, without the written consent of the resolution authority, commence or continue any action or proceeding against an entity mentioned in subsection (1) or (2) to attach any assets of, or obtain the payment of money or delivery of any other property by, the entity.

(6) Nothing in this section applies to an excluded obligation.

(7) In this section—

excluded obligation (獲豁除義務) means an obligation listed in section 84.

84. Excluded obligations

(1) The following obligations are excluded obligations for section 83(7)—

(a) an obligation to pay the whole or any part of a protected deposit;

(b) for a financial institution that is exempt from section 12(1) of the Deposit Protection Scheme Ordinance (Cap. 581), an obligation to pay a deposit covered by a deposit protection scheme, or other scheme of a similar nature, that protects deposits taken by it at its Hong Kong offices;

(c) an obligation arising under the Employment Ordinance (Cap. 57) to pay wages or any of the following—

(i) annual leave pay;

(ii) end of year payment;

(iii) holiday pay;

(iv) long service payment;

(v) maternity leave pay;

(vi) paternity leave pay;

(vii) payment in lieu of notice;

(viii) severance payment;

(ix) sickness allowance;

(x) terminal payment;

(d) an obligation under a policy as defined by regulation 2 of the Motor Vehicles Insurance (Third Party Risks) Regulations (Cap. 272 sub. leg. A) that is protected by the Insolvency Fund administered by the Motor Insurers' Bureau of Hong Kong;

(e) an obligation under a policy of insurance issued for the purposes of this Part as defined by section 38 of the Employees' Compensation Ordinance (Cap. 282) that is protected by the Employees Compensation Insurer Insolvency Scheme administered by the Employees Compensation Insurer Insolvency Bureau;

(f) an obligation under a policy of insurance in respect of any claim for compensation under a scheme established by or under an Ordinance and designed to secure compensation to persons in circumstances in which the insurer becomes insolvent;

(g) an obligation of a financial institution in relation to its participation, whether directly or indirectly, in financial market infrastructure;

(h) an obligation in relation to a security interest that a financial market infrastructure has in relation to any asset of a financial institution that has been pledged or provided as collateral or as cover for margin by a financial institution.

(2) In subsection (1)(h)—

security interest (抵押權益) means an interest or right held for securing the payment of money or the performance of any other obligation.

85. When obligation falls due

A contractual obligation to make a payment or delivery that falls due while the obligation is suspended under this Division is to be treated as falling due immediately on the expiry of the suspension.

Division 4—Default Event Provisions

86. Interpretation

In this Division—

crisis prevention measure (危機防範措施), in relation to a qualifying entity, means the exercise in respect of the entity by a resolution authority of any power under Part 3, 5 or 13 or Division 2 of Part 4;

default event provision (違責事件條文) means—

(a) a provision of a contract that has the effect that if a specified event occurs or a specified situation arises—

(i) the contract is terminated, modified or replaced;

(ii) rights or obligations under the contract are extinguished, suspended, modified or replaced;

(iii) a right accrues to terminate, modify or replace the contract;

(iv) a right accrues to extinguish, suspend, modify or replace rights or obligations under the contract;

(v) a right accrues to accelerate, close out, set off or net obligations under the contract;

(vi) a right accrues to prevent a duty from arising under the contract;

(vii) a sum becomes payable or ceases to be payable;

(viii) delivery of anything becomes due or ceases to be due;

(ix) a right to claim a payment or delivery accrues, changes or lapses;

(x) any other right accrues, changes or lapses; or

(xi) an interest is created, changes or lapses; or

(b) a provision of a contract that has the effect that a provision of the contract—

(i) only takes effect if a specified event occurs or does not occur;

(ii) only takes effect if a specified situation arises or does not arise;

(iii) only has effect for so long as a specified event does not occur;

(iv) only has effect while a specified situation lasts;

(v) applies differently if a specified event occurs;

(vi) applies differently if a specified situation arises; or

(vii) applies differently while a specified situation lasts;

qualifying contract (合資格合約)—see section 88;

qualifying entity (合資格實體) means an entity to which this Division applies;

termination right (終止權), in relation to a qualifying contract, means—

(a) a right to terminate the contract;

(b) a right to accelerate, close out, set off or net obligations, or any similar right that suspends, modifies or extinguishes an obligation of a party to the contract; or

(c) a right to prevent an obligation from arising under the contract.

87. Application of Division

This Division applies to—

(a) a within scope financial institution; or

(b) a group company of a within scope financial institution.

88. Qualifying contracts

A contract entered into by a qualifying entity is a qualifying contract if the obligations provided for in it for payment and delivery and for provision of collateral continue to be performed.

89. Events to be disregarded

A crisis prevention measure taken in relation to a qualifying entity, or the occurrence of an event directly linked to the taking of such a measure, does not of itself trigger a default event provision under a contract—

(a) that is entered into by the qualifying entity or by an entity that is a member of the same group of companies as the qualifying entity; and

(b) the substantive obligations provided for in which (including payment and delivery obligations and provision of collateral) continue to be performed.

90. Suspension of termination rights

(1) This section applies if a termination right of a counterparty to a qualifying contract becomes exercisable.

(2) A resolution authority may, by way of provision in a Part 5 instrument, suspend for a specified period the termination right of a counterparty to the contract (other than a counterparty that is a financial market infrastructure).

(3) The resolution authority must have regard to the impact a suspension might have on the orderly functioning of the financial market in Hong Kong before exercising a power under subsection (2).

(4) A suspension imposed under subsection (2)—

(a) begins when the instrument providing for the suspension is first published; and

(b) ends at the end of the period of suspension specified in that instrument, being no later than the expiry of the first business day following the day on which that instrument is published.

(5) For a qualifying entity that is an insurance sector entity, a suspension under subsection (2)—

(a) covers any right to cancel or withdraw under a contract of insurance that arises because of the taking of a measure, or the occurrence of an event, mentioned in section 89; and

(b) covers any right of a reinsurer to terminate or not to reinstate coverage relating to any period after the initiation of resolution of the qualifying entity that arises because of the taking of a measure, or the occurrence of an event, mentioned in section 89.

(6) Despite anything in this section, a suspension under subsection (2) has effect subject to section 91.

91. Limitations on suspension

(1) A counterparty to a qualifying contract may exercise a termination right under the contract during the period of a suspension under section 90(2) if the counterparty is notified in writing by the resolution authority that—

(a) the rights and liabilities of the qualifying entity covered by the contract will not be transferred through the application of a stabilization option; and

(b) a bail-in stabilization option will not be applied to the qualifying entity.

(2) A counterparty to a qualifying contract may exercise a termination right under the contract at any time on or after the expiry of the period of a suspension under section 90(2) if the termination right has been triggered otherwise than by a crisis prevention measure taken in relation to the qualifying entity, or the occurrence of an event directly linked to the taking of such a measure.

(3) However, if the rights and liabilities of the qualifying entity covered by the qualifying contract have been transferred to another entity, subsection (2) only applies if that other entity has caused the event triggering the termination right to occur.

92. Rules relating to suspension of termination rights

(1) For ensuring the effective implementation of section 90, a resolution authority may make rules that impose a requirement on a qualifying entity to ensure that the terms and conditions of a contract entered into by it contain a provision to the effect that the parties to the contract agree to be bound by any suspension of termination rights in relation to the contract imposed under section 90(2).

(2) The rules may—

(a) specify the contracts, or classes of contracts, to which the requirement applies;

(b) specify the qualifying entities, or classes of qualifying entities, bound by the requirement;

(c) require a qualifying entity bound by the requirement to provide to the resolution authority an opinion from counsel or a solicitor that any provision included by it in contracts in compliance with the rules is legally enforceable; or

(d) include incidental, consequential or transitional provisions.

Division 5—General

93. Functions of resolution authority

(1) A resolution authority may—

(a) manage the affairs, business or property of an entity in resolution; or

(b) exercise any power of an entity in resolution, including a power with respect to the management of the affairs, business or property of the entity.

(2) A resolution authority may, for facilitating the orderly resolution of an entity in resolution, by way of provision in a Part 5 instrument provide for securities to be transferred or issued—

(a) to the resolution authority; or

(b) to a section 10 entity.

(3) A section 10 entity must hold any securities transferred or issued to it on any terms that the resolution authority may specify.

Part 6

Compensation

Division 1—Preliminary

94. Interpretation

In this Part—

resolution treatment (處置待遇) means the treatment mentioned in section 103(1)(b);

valuation assumptions and principles (估值假設及原則) means the valuation assumptions and principles set out in Schedule 7 or specified in the regulations made under section 105(1);

winding up treatment (清盤待遇) means the treatment mentioned in section 103(1)(a).

Division 2—Independent Valuer

95. Appointment of appointing person

(1) The appointment of an independent valuer for the purposes of this Part is to be made by a person (***appointing person***) appointed by the Financial Secretary.

(2) The Financial Secretary may appoint an appointing person on any terms and conditions that the Financial Secretary thinks fit.

(3) The Financial Secretary must cause notice of the appointment of an appointing person to be published in the Gazette.

(4) The appointment of an appointing person takes effect on the publication of the notice under subsection (3).

(5) An appointing person may at any time resign from office by giving written notice of resignation to the Financial Secretary.

(6) The Financial Secretary must cause notice of the resignation of an appointing person to be published in the Gazette.

(7) The resignation of an appointing person takes effect on the publication of the notice under subsection (6).

(8) The acts of a person acting as an appointing person are valid despite the fact that it is afterwards discovered that there was a defect in the appointment of the appointing person.

96. Appointment of independent valuer

(1) A resolution authority, as soon as practicable after making for the first time a Part 5 instrument in respect of an affected entity, must notify the appointing person in writing of that fact.

(2) The appointing person must appoint an independent valuer for the purposes of this Part as soon as practicable after being notified under subsection (1).

(3) The appointing person may only appoint as an independent valuer a person whom the appointing person is satisfied meets the criteria specified in Schedule 2.

(4) The appointing person must not appoint as an independent valuer a person who is, or has been within the previous 5 years, a section 10 entity in relation to the resolution authority.

(5) The appointment of an independent valuer is to be made on terms and conditions approved by the Financial Secretary, including terms and conditions as to the keeping of records and accounts.

(6) An independent valuer is entitled to be paid the remuneration and allowances approved by the Financial Secretary.

(7) An appointment of an independent valuer must be notified in the Gazette.

(8) An independent valuer is entitled to be given a copy in writing of the terms and conditions on which the appointment is made.

(9) The acts of a person acting as an independent valuer are valid despite the fact that it is afterwards discovered that there was a defect in the appointment of the independent valuer, other than a defect arising because the independent valuer did not meet the criteria specified in Schedule 2.

97. Access to relevant information

(1) A resolution authority must exercise the powers that it has under this Ordinance to, as far as practicable, provide access, or procure the provision of access, for the independent valuer to the material mentioned in subsection (2).

(2) The material is—

(a) details of any valuation made under section 35(1) in relation to the affected entity; and

(b) any records and documents of the affected entity, or of an entity that is or was at any relevant time a related entity of the affected entity, that are, or any other information that is, relevant to the performance by the independent valuer of functions under this Part.

(3) The obligation under subsection (1) continues for the whole period during which the independent valuer is performing functions under this Part.

(4) In this section—

related entity (關連實體), in relation to an affected entity, means—

(a) an officer of the affected entity;

(b) a group company of the affected entity;

(c) an officer of a group company of the affected entity; or

(d) a person holding or accountable for any records or documents of the affected entity, or of a group company of the affected entity, that are relevant to, or who has any other information that is relevant to, the performance by the independent valuer of functions under this Part.

98. Revocation of appointment of independent valuer

(1) The Resolution Compensation Tribunal may revoke the appointment of a person as an independent valuer if, in its opinion, one or more of the following circumstances exists in relation to the person—

(a) the person is incapable of performing the functions of an independent valuer;

(b) the person is not performing the functions of an independent valuer impartially and independently;

(c) the person is guilty of serious misconduct;

(d) the person no longer satisfies the criteria for appointment specified in Schedule 2.

(2) The Resolution Compensation Tribunal may act under subsection (1) on an application made to it by the resolution authority or by a pre-resolution creditor or pre-resolution shareholder.

(3) The Resolution Compensation Tribunal must cause notice of an application under subsection (2) to be served on the independent valuer and the resolution authority, if the resolution authority is not the applicant.

(4) In determining an application, the Resolution Compensation Tribunal must ensure that the parties to the proceeding are given a reasonable opportunity of being heard and are entitled to call, examine and cross-examine any witness.

(5) The Resolution Compensation Tribunal, if it revokes an appointment under subsection (1), must notify in writing, apart from the applicant, the appointing person and the independent valuer whose appointment has been revoked as soon as practicable after doing so.

(6) The appointing person must, if the resolution authority is not the applicant, notify in writing the resolution authority of the revocation of the appointment as soon as practicable after being notified of it under subsection (5).

99. Appointment of new valuer

(1) The appointing person must appoint a new independent valuer in accordance with section 96 as soon as practicable after the office of independent valuer becomes vacant, including when an appointment is revoked under section 98(1).

(2) As soon as practicable after a new independent valuer is appointed under subsection (1), the resolution authority may, by notice in writing served on the person who has ceased to hold the office of independent valuer, require the person to provide the documents, records or accounts to which this subsection applies to the person appointed as the successor of the person in that office within the period, and in the manner, specified in the notice.

(3) Subsection (2) applies to—

(a) any document provided to the person in the capacity of independent valuer;

(b) any records or accounts kept by the person as required under section 96(5); and

(c) any other records made by the person in the capacity of independent valuer that are relevant to the performance by a successor independent valuer of functions under this Part.

(4) Documents required to be provided under subsection (2) may include original documents or copies of documents that are held in any form.

(5) A person who, without reasonable excuse, fails to comply with a requirement under subsection (2) commits an offence and is liable—

(a) on conviction on indictment to a fine of $200,000 and to imprisonment for one year and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues.

(6) A person who produces any document for complying with a requirement under subsection (2) that the person knew, or ought reasonably to have known, to be false in a material particular commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(7) A new independent valuer appointed under subsection (1) may have such regard to anything done by a predecessor as the valuer thinks fit.

100. Use of information

(1) A person—

(a) must not use any information obtained by the person under this Part other than for performing functions under this Part; and

(b) must not use any information that comes to the person's knowledge in the course of assisting another person to perform a function under this Part other than for assisting that person to perform that function.

(2) A person who contravenes subsection (1) and at the time of using the information knew or ought reasonably to have known that the information was obtained, or came to the person's knowledge, as mentioned in subsection (1) commits an offence unless the person proves that the person had reasonable grounds to believe that the use by the person was—

(a) with the consent of the resolution authority;

(b) for seeking advice from, or the giving of advice by, counsel or a solicitor or other professional advisor acting or proposing to act in a professional capacity in connection with a matter arising under this Ordinance; or

(c) of information that was available to the public.

(3) A person who commits an offence under subsection (2) is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

Division 3—Valuation

101. Role of independent valuer

The role of an independent valuer appointed under section 96 is to make a valuation in relation to an affected entity in accordance with this Division and decide whether any pre-resolution creditor or pre-resolution shareholder is eligible for a payment of compensation.

102. Eligibility for compensation

Any pre-resolution creditor or pre-resolution shareholder of the affected entity who has received, is receiving or is likely to receive, as a result of the resolution of that entity, less favourable treatment than would have been the case had winding up of the entity commenced immediately before its resolution was initiated is eligible for a payment of compensation.

103. What independent valuer must assess

(1) In making a valuation, the independent valuer must—

(a) assess the treatment that a pre-resolution creditor or pre-resolution shareholder, or a class of pre-resolution creditor or pre-resolution shareholder, would have received if winding up of the affected entity had commenced immediately before its resolution was initiated;

(b) assess the actual treatment that the pre-resolution creditor or pre-resolution shareholder, or the class of pre-resolution creditor or pre-resolution shareholder, has received, is receiving or is likely to receive as a result of the resolution of the affected entity, disregarding any compensation that may be payable under this Part and any clawback order made under Part 8; and

(c) if there is a difference between the treatment mentioned in paragraph (a) and the treatment mentioned in paragraph (b), assess the amount of that difference.

(2) In making a valuation, the independent valuer must—

(a) do so in accordance with the valuation assumptions and principles; and

(b) apply the presumption mentioned in subsection (3).

(3) Either of the circumstances mentioned in subsection (4) raises a rebuttable presumption that the resolution treatment is not less favourable than the winding up treatment in relation to a liability (whether arising under a contract or otherwise) owed by the affected entity to a pre-resolution creditor.

(4) The circumstances are that in the course of the resolution—

(a) a bail-in instrument is made in respect of the affected entity but the liability is not subject to any bail-in provision contained in the instrument resulting in the liability continuing as a liability of the affected entity on the same terms; and

(b) the liability is transferred to another entity under a Part 5 instrument and that other entity is subject to the liability on the same terms as those on which the affected entity was subject to it.

104. Decision of independent valuer

(1) This section applies if the assessment of the independent valuer is that the resolution treatment is less favourable to a pre-resolution creditor or pre-resolution shareholder than the winding up treatment.

(2) The independent valuer must make a decision that the pre-resolution creditor or pre-resolution shareholder is entitled to a payment of compensation of an amount equal to the amount of the difference as assessed by the independent valuer under section 103(1)(c).

(3) The independent valuer may, at any time before a decision under this section takes effect, correct a clerical mistake in the decision or the assessment on which the decision is made, or an error in that decision or assessment arising from any accidental slip or omission.

(4) However, subsection (3) does not empower the independent valuer to correct a clerical mistake or error if the amount of compensation mentioned in subsection (2) would be changed because of the correction.

105. Regulations

(1) The Secretary for Financial Services and the Treasury may make regulations for carrying this Division into effect.

(2) Without limiting subsection (1), regulations made under that subsection may—

(a) specify assumptions to be made, and principles to be applied, by an independent valuer in making a valuation under this Division, in addition to those set out in Schedule 7;

(b) prescribe a process for the conduct of the valuation, including as to how—

(i) information or claims may be submitted, or representations made, by the resolution authority, pre-resolution creditors, pre-resolution shareholders or any class of pre-resolution creditor or pre-resolution shareholder; and

(ii) any such information, claims or representations may be dealt with by the independent valuer;

(c) provide for how notice of a decision made under section 104 may be given to the affected entity, the resolution authority and any pre-resolution creditor or pre-resolution shareholder affected by it;

(d) provide for the method for making payments of compensation, including interim payments;

(e) provide for the recovery of payments of compensation in specified circumstances; or

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

106. Time when decision takes effect

A decision made under section 104 takes effect—

(a) on the expiry of the period within which an application may be made under section 107(1) for a review of the decision, if no application is made within that period; or

(b) if an application mentioned in paragraph (a) is made—

(i) if the decision is confirmed by the Resolution Compensation Tribunal, at the time when the decision is so confirmed;

(ii) if the decision is varied by the Resolution Compensation Tribunal or it substitutes another decision for the decision, at the time when the decision is so varied or substituted, subject however to the terms on which that is done; or

(iii) if the application is withdrawn, at the time when it is so withdrawn.

Division 4—Review of Compensation Decision

107. Application to Resolution Compensation Tribunal

(1) Any of the following may, at any time within the period specified in subsection (3), by written notice given to the Resolution Compensation Tribunal, apply to it for a review of a decision made by an independent valuer under section 104—

(a) a pre-resolution creditor or pre-resolution shareholder who is aggrieved by the decision;

(b) the resolution authority of the affected entity to which the decision relates.

(2) An application for review must set out the grounds for the application.

(3) The period specified for the purposes of subsection (1) is the period of 3 months beginning on the date on which notice of the decision made by the independent valuer was given to the pre-resolution creditor, pre-resolution shareholder or the resolution authority, as the case requires.

(4) Despite subsection (3), the Resolution Compensation Tribunal, on the written application of any person, may by order extend the time within which an application for review of a decision may be made if satisfied that there is good cause for granting the extension.

(5) The making of an application to the Resolution Compensation Tribunal for a review of a decision operates as a stay of execution of the decision.

108. Determination of application

(1) As soon as practicable after an application under section 107(1) is received by it, the Resolution Compensation Tribunal must—

(a) publish notice of the application—

(i) on its internet website; and

(ii) in 2 newspapers (one being an English language newspaper and the other being a Chinese language newspaper) chosen by the Tribunal to maximize the likelihood of the notice coming to the attention of persons likely to be affected;

(b) send a copy of the application to the independent valuer; and

(c) send notice of the application to the resolution authority, if it is not the applicant.

(2) As soon as practicable after receiving a copy of the application, the independent valuer must forward to the Resolution Compensation Tribunal a copy of the decision together with all other records and documents in the possession of the independent valuer that the independent valuer considers relevant.

(3) In reviewing a decision, the Resolution Compensation Tribunal must ensure that the parties to the proceeding are given a reasonable opportunity of being heard and are entitled to call, examine and cross-examine any witness.

(4) The standard of proof required to determine any question or issue before the Resolution Compensation Tribunal is the standard of proof applicable to civil proceedings in a court of law.

(5) In determining a review of a decision, the Resolution Compensation Tribunal may—

(a) subject to subsection (6), confirm, vary or set aside the decision and, if the decision is set aside, substitute for the decision any other decision that the Tribunal considers appropriate; or

(b) remit the matter to the independent valuer with any direction that it considers appropriate, which may include a direction to make a fresh decision in respect of any matter specified by the Tribunal.

(6) The Resolution Compensation Tribunal may only vary or set aside a decision of an independent valuer if satisfied that—

(a) it is a decision that could not have been made by a person who satisfies the criteria specified in Schedule 2 and who reasonably and competently applied the valuation assumptions and principles and the rebuttable presumption mentioned in section 103(3); or

(b) the decision is otherwise fundamentally flawed.

(7) If the Resolution Compensation Tribunal varies, or substitutes a decision for, a decision of an independent valuer, the decision as varied or the substituted decision—

(a) must be one that the independent valuer had power to make; and

(b) is binding on all who were bound by the original decision.

Part 7

Tribunals

Division 1—Resolvability Review Tribunal

109. Interpretation

In this Division—

Tribunal (審裁處) means the Resolvability Review Tribunal.

110. Establishment of Resolvability Review Tribunal

(1) A tribunal is established with the name "Resolvability Review Tribunal" in English and "處置可行性覆檢審裁處" in Chinese.

(2) The Tribunal—

(a) consists of a chairperson and 2 other members; and

(b) is presided over by the chairperson.

(3) Schedule 8 has effect with respect to the Tribunal.

111. Establishment of additional tribunals

(1) If the Chief Executive considers it appropriate to do so, the Chief Executive may establish additional tribunals for any reviews over which the Tribunal has jurisdiction.

(2) This Ordinance applies, with necessary modifications, to each of the additional tribunals as it applies to the Tribunal.

112. Jurisdiction of Tribunal

The Tribunal has jurisdiction, in accordance with this Part and Schedule 8—

(a) to review any decision made by a resolution authority or a lead resolution authority to serve a notice under section 14(2);

(b) to review any decision mentioned in section 19(3)(k); and

(c) to hear and determine any question or issue arising out of, or in connection with, a review mentioned in paragraph (a) or (b).

113. Powers of Tribunal

(1) Subject to Schedule 8 and any rules made under section 122, the Tribunal, for the purpose of a proceeding, may, on its own initiative or on the application of any party to the proceeding—

(a) receive and consider any material by way of oral evidence, written statements or documents, even if the material would not be admissible in evidence in civil or criminal proceedings in a court of law;

(b) determine the manner in which any material referred to in paragraph (a) is received;

(c) by written notice signed by the chairperson, require a person to attend before the Tribunal at any sitting and to give evidence and produce any article, record or document in the person's possession relating to the subject matter of the proceeding;

(d) call a person as an expert witness to give evidence;

(e) administer oaths;

(f) examine, or cause to be examined, on oath or otherwise a person attending before the Tribunal and require the person to answer truthfully any question that the Tribunal considers appropriate for the purpose of the proceeding;

(g) order a witness to give evidence in a truthful manner for the purpose of the proceeding by affidavit;

(h) order a person not to publish or otherwise disclose any material the Tribunal receives;

(i) prohibit the publication or disclosure of any material the Tribunal receives at any sitting, or any part of a sitting;

(j) stay any proceeding on such grounds, and on such terms and conditions, as the Tribunal considers appropriate having regard to the interests of justice;

(k) determine the procedure to be followed in a proceeding;

(l) consolidate the hearing and determination of 2 or more applications; or

(m) exercise any other powers or make any other orders that are necessary for, or ancillary to the conduct of, a proceeding or the carrying out of its functions.

(2) If the Tribunal calls an expert witness under subsection (1)(d), it must ensure that all the parties to the proceeding are given an opportunity to cross-examine the witness.

(3) A person commits an offence if, without reasonable excuse, the person—

(a) fails to comply with a notice, requirement, order or prohibition of the Tribunal given or made under subsection (1);

(b) disrupts or otherwise misbehaves during any sitting of the Tribunal;

(c) having been required by the Tribunal under subsection (1) to attend before it, leaves the place where attendance is so required without the permission of the Tribunal;

(d) hinders or deters any person from attending before the Tribunal, giving evidence or producing any article, record or document for the purpose of a proceeding;

(e) threatens, insults or causes any loss to be suffered by any person who has attended before the Tribunal on account of that attendance; or

(f) threatens, insults or causes any loss to be suffered by the chairperson or any other member of the Tribunal at any time on account of the performance by that person of functions as chairperson or member.

(4) A person who commits an offence under subsection (3) is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(5) A person is not excused from complying with a notice, requirement, order or prohibition of the Tribunal given or made under subsection (1) only on the ground that to do so might tend to incriminate the person.

(6) Nothing in this Division or Schedule 8 empowers the Tribunal to require a consultant or advisor of any party to a proceeding to disclose any information relating to the affairs of any person other than the party.

114. Sittings of Tribunal to be held in private

(1) The sittings of the Tribunal must be held in private.

(2) A participant in a proceeding must not, at the time of the proceeding or at any other time, publish or otherwise disclose to any person any information about the proceeding or any information that comes to the participant's knowledge in the course of the proceeding.

(3) Subsection (2) does not apply to a disclosure by a participant (***disclosing participant***)—

(a) made to another participant in the same proceeding if the disclosure is necessary for the proper performance of the disclosing participant's functions in relation to the proceeding; or

(b) necessarily made for the purpose of an appeal to the Court of Appeal under section 123 in relation to the proceeding.

(4) Subsection (2) does not apply to publication by the Tribunal under subsection (6) of the reasons for its determination in any proceeding.

(5) A person who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(6) The Tribunal may, with the consent of the applicant and the relevant resolution authority, for the information of within scope financial institutions generally, publish the reasons for its determination in any proceeding, or a summary of any part of those reasons, but without

disclosing or containing information leading to the disclosure of—

(a) the identity of the applicant or any witness in the proceeding;

(b) any commercially sensitive information relating to the applicant; or

(c) any confidential information obtained from the relevant resolution authority.

(7) In this section—

participant (參與者), in relation to any proceeding, means the chairperson and ordinary members of the Tribunal, the applicant in the proceeding and any witness, counsel, solicitor or other person involved in the proceeding but, without affecting section 173, does not include the relevant resolution authority.

115. Use of incriminating evidence required by Tribunal

(1) This section applies if the Tribunal—

(a) requires a person to give evidence under section 113(1)(c);

(b) requires a person to answer any question under section 113(1)(f);

(c) orders a person to give evidence under section 113(1)(g); or

(d) otherwise orders or requires a person to provide any information under section 113(1)(m).

(2) A person is not excused from complying with the requirement or order on the ground that the evidence, answer or information might tend to incriminate the person.

(3) However, subsection (4) applies if the evidence, answer or information might tend to incriminate the person.

(4) Despite any other provision of this Ordinance, the requirement or order as well as the evidence, the question and answer or the information (as the case requires) is not admissible in evidence against the person in criminal proceedings in a court of law other than those in which the person is charged in respect of the evidence, answer or information with an offence under section 113(3)(a) or under Part V of the Crimes Ordinance (Cap. 200).

116. Contempt dealt with by Tribunal

(1) The Tribunal has the same powers as the Court to punish for contempt.

(2) Without limiting subsection (1), the Tribunal may punish a person who, without reasonable excuse, commits any conduct falling under section 113(3) as if the conduct were a contempt of court and the Tribunal were the Court.

(3) In exercising its powers to punish for contempt under this section, the Tribunal may adopt the same standard of proof as the Court would in exercising the same powers.

117. Costs

(1) The Tribunal may, in relation to a proceeding, by order award to—

(a) any person whose attendance, whether or not as a witness, has been necessary or required for the purpose of the proceeding; or

(b) any party to the proceeding,

any sum that it considers appropriate in respect of the costs reasonably incurred by the person, or the party, in relation to the proceeding and the application for review in question.

(2) Costs awarded under subsection (1) must be paid by, and are recoverable as a civil debt from—

(a) if they are awarded to a person under subsection (1)(a), any party to the proceeding that the Tribunal considers appropriate; or

(b) if they are awarded to a party to the proceeding under subsection (1)(b), the other party to the proceeding.

(3) Subject to any rules made by the Chief Justice under section 122, Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) applies to the award of costs, and to the taxation of any costs awarded, by the Tribunal under subsection (1).

118. Notification of determinations or orders of Tribunal

The Tribunal must, as soon as practicable after the conclusion of a proceeding, deliver—

(a) its determination in respect of the proceeding, and the reasons for making the determination; and

(b) any order made under section 117 in relation to the proceeding, and the reasons for making the order.

119. Form and proof of determinations or orders of Tribunal

(1) A determination or order made by the Tribunal must be recorded in writing and signed by the chairperson of the Tribunal.

(2) For any purpose, a document purporting to be a determination or order of the Tribunal and to be signed by its chairperson must, in the absence of evidence to the contrary, be regarded as a determination or order of the Tribunal duly made and signed, without proof of its making or proof of signature, or proof that the person signing the determination or order was in fact the chairperson.

120. Application for stay of execution of determinations or orders of Tribunal

(1) A party to a proceeding may, at any time after the conclusion of the proceeding, apply to the Tribunal for a stay of execution of a determination or order of the Tribunal relating to the review.

(2) On an application under subsection (1), the Tribunal may, if the Tribunal considers it appropriate to do so, by order grant the stay, subject to any conditions as to costs, payment of money into the Tribunal or otherwise that the Tribunal considers appropriate.

121. No other right of appeal

Any determination or order of the Tribunal is final and, except as provided in section 123, is not subject to appeal.

122. Rules by Chief Justice

The Chief Justice may make rules—

(a) with respect to the joinder as parties to a proceeding before the Tribunal of entities that—

(i) have a common interest in the matter;

(ii) have claims arising out of the same, similar or related circumstances; or

(iii) for some other reason it is desirable to join as parties;

(b) providing for the award of costs under section 117 and the taxation of those costs;

(c) regulating—

(i) the procedure for applications for leave to appeal under section 123, and for the hearing of the applications; and

(ii) the procedure for the hearing of appeals under section 123;

(d) requiring the payment of the fees specified in the rules for any matter relating to applications to the Tribunal;

(e) providing for matters of procedure or other matters relating to applications to the Tribunal, that are not provided for in this Part or Schedule 8;

(f) providing for the issue or service of any document (however described) for the purposes of this Part or Schedule 8; or

(g) prescribing any matter that this Part provides is, or may be, prescribed by rules made by the Chief Justice.

123. Party may appeal to Court of Appeal with leave

(1) A party to a proceeding who is dissatisfied with a determination of the Tribunal may, with the leave of a judge of the Court of Appeal, appeal to the Court of Appeal against the determination on a question of law.

(2) Leave to appeal may be granted in respect of a particular issue arising out of a determination of the Tribunal.

(3) Leave to appeal may be granted subject to any conditions that the judge hearing the application for leave considers necessary in order to secure the just, expeditious and economical disposal of the appeal.

(4) Leave to appeal must not be granted unless the judge hearing the application for leave is satisfied that—

(a) the appeal has a reasonable prospect of success; or

(b) there is some other reason in the interests of justice why the appeal should be heard.

(5) No appeal lies from a decision of the Court of Appeal as to whether or not leave to appeal to it should be granted.

124. Powers of Court of Appeal

(1) On an appeal from a determination of the Tribunal, the Court of Appeal may—

(a) allow the appeal;

(b) dismiss the appeal;

(c) vary or set aside the determination and, if the determination is set aside, substitute for the determination any other determination it considers appropriate; or

(d) remit the matter in question to the Tribunal with any direction that it considers appropriate, which may include a direction to make a fresh determination in respect of any matter specified by the Court of Appeal.

(2) If the Court of Appeal under subsection (1)(c) varies, or substitutes a determination for, a determination of the Tribunal, the determination as varied or the substituted determination must be one that the Tribunal had power to make.

(3) On an appeal, the Court of Appeal—

(a) may make any order as to costs that it considers appropriate; and

(b) if it under subsection (1)(a) allows the appeal, or under subsection (1)(c) varies or sets aside a determination of the Tribunal, may by an order mentioned in paragraph (a) direct that there is to be included in any costs to be paid by the respondent to the appellant—

(i) the costs reasonably incurred by the appellant in relation to the proceeding before the Tribunal and the application for review in question; or

(ii) any fixed sum that it considers reasonable in respect of the costs mentioned in subparagraph (i).

125. No stay of execution on appeal

(1) Without affecting section 120, the lodging of an appeal under section 123 does not by itself operate as a stay of execution of a determination of the Tribunal unless the Court of Appeal otherwise orders.

(2) Any order under subsection (1) may be subject to any conditions as to costs, payment of money into court or otherwise that the Court of Appeal considers appropriate.

Division 2—Resolution Compensation Tribunal

126. Interpretation

In this Division—

Tribunal (審裁處) means the Resolution Compensation Tribunal.

127. Establishment of Resolution Compensation Tribunal

(1) A tribunal is established with the name "Resolution Compensation Tribunal" in English and "處置補償審裁處" in Chinese.

(2) The Tribunal—

(a) consists of a chairperson and 2 other members; and

(b) is presided over by the chairperson.

(3) Schedule 9 has effect with respect to the Tribunal.

128. Establishment of additional tribunals

(1) If the Chief Executive considers it appropriate to do so, the Chief Executive may establish additional tribunals for any applications, reviews or disputes over which the Tribunal has jurisdiction.

(2) This Ordinance applies, with necessary modifications, to each of the additional tribunals as it applies to the Tribunal.

129. Jurisdiction of Tribunal

The Tribunal has jurisdiction, in accordance with this Part and Schedule 9—

(a) to revoke the appointment of an independent valuer under section 98(1) on an application under section 98(2);

(b) to review, on an application under section 107(1), a decision made by an independent valuer under section 104;

(c) to determine any dispute required to be determined by it by regulations made under section 184; and

(d) to hear and determine any question or issue arising out of, or in connection with, an application mentioned in paragraph (a), a review mentioned in paragraph (b) or a dispute mentioned in paragraph (c).

130. Powers of Tribunal

(1) Subject to Schedule 9 and any rules made under section 140, the Tribunal, for the purpose of a proceeding, may, on its own initiative or on the application of any party to the proceeding—

(a) receive and consider any material by way of oral evidence, written statements or documents, even if the material would not be admissible in evidence in civil or criminal proceedings in a court of law;

(b) determine the manner in which any material referred to in paragraph (a) is received;

(c) by written notice signed by the chairperson, require a person to attend before the Tribunal at any sitting and to give evidence and produce any article, record or document in the person's possession relating to the subject matter of the proceeding;

(d) call as an expert witness to give evidence a person whom it is satisfied would have been suitable for appointment as an independent valuer in relation to the entity concerned;

(e) administer oaths;

(f) examine, or cause to be examined, on oath or otherwise a person attending before the Tribunal and require the person to answer truthfully any question that the Tribunal considers appropriate for the purpose of the proceeding;

(g) order a witness to give evidence in a truthful manner for the purpose of the proceeding by affidavit;

(h) order a person not to publish or otherwise disclose any material the Tribunal receives;

(i) prohibit the publication or disclosure of any material the Tribunal receives at any sitting, or any part of a sitting, that is held in private;

(j) stay any proceeding on such grounds, and on such terms and conditions, as the Tribunal considers appropriate having regard to the interests of justice;

(k) determine the procedure to be followed in a proceeding;

(l) consolidate the hearing and determination of 2 or more applications; or

(m) exercise any other powers or make any other orders that are necessary for, or ancillary to the conduct of, a proceeding or the carrying out of its functions.

(2) If the Tribunal calls an expert witness under subsection (1)(d), it must ensure that all the parties to the proceeding are given an opportunity to cross-examine the witness.

(3) A person commits an offence if, without reasonable excuse, the person—

(a) fails to comply with a notice, requirement, order or prohibition of the Tribunal given or made under subsection (1);

(b) disrupts or otherwise misbehaves during any sitting of the Tribunal;

(c) having been required by the Tribunal under subsection (1) to attend before it, leaves the place where attendance is so required without the permission of the Tribunal;

(d) hinders or deters any person from attending before the Tribunal, giving evidence or producing any article, record or document for the purpose of a proceeding;

(e) threatens, insults or causes any loss to be suffered by any person who has attended before the Tribunal on account of that attendance; or

(f) threatens, insults or causes any loss to be suffered by the chairperson or any other member of the Tribunal at any time on account of the performance by that person of functions as chairperson or member.

(4) A person who commits an offence under subsection (3) is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(5) A person is not excused from complying with a notice, requirement, order or prohibition of the Tribunal given or made under subsection (1) only on the ground that to do so might tend to incriminate the person.

(6) Nothing in this Division or Schedule 9 empowers the Tribunal to require a consultant or advisor of any party to a proceeding to disclose any information relating to the affairs of any person other than the party.

131. Sittings of Tribunal to be held in public

(1) Every sitting of the Tribunal must be held in public.

(2) However, subsection (1) does not apply if the Tribunal, on its own initiative or on the application of a party, determines that in the interests of justice a sitting, or any part of a sitting, must be held in private.

(3) The hearing of an application mentioned in subsection (2) must be held in private.

132. Use of incriminating evidence required by Tribunal

(1) This section applies if the Tribunal—

(a) requires a person to give evidence under section 130(1)(c);

(b) requires a person to answer any question under section 130(1)(f);

(c) orders a person to give evidence under section 130(1)(g); or

(d) otherwise orders or requires a person to provide any information under section 130(1)(m).

(2) A person is not excused from complying with the requirement or order on the ground that the evidence, answer or information might tend to incriminate the person.

(3) However, subsection (4) applies if the evidence, answer or information might tend to incriminate the person.

(4) Despite any other provision of this Ordinance, the requirement or order as well as the evidence, the question and answer or the information (as the case requires) is not admissible in evidence against the person in criminal proceedings in a court of law other than those in which the person is charged in respect of the evidence, answer or information with an offence under section 130(3)(a) or under Part V of the Crimes Ordinance (Cap. 200).

133. Contempt dealt with by Tribunal

(1) The Tribunal has the same powers as the Court to punish for contempt.

(2) Without limiting subsection (1), the Tribunal may punish a person who, without reasonable excuse, commits any conduct falling under section 130(3) as if the conduct were a contempt of court and the Tribunal were the Court.

(3) In exercising its powers to punish for contempt under this section, the Tribunal may adopt the same standard of proof as the Court would in exercising the same powers.

134. Costs

(1) The Tribunal may, in relation to a proceeding, by order award to—

(a) any person whose attendance, whether or not as a witness, has been necessary or required for the purpose of the proceeding; or

(b) any party to the proceeding,

any sum that it considers appropriate in respect of the costs reasonably incurred by the person, or the party, in relation to the proceeding and the application to the Tribunal in question.

(2) Costs awarded under subsection (1) must be paid by, and are recoverable as a civil debt from—

(a) if they are awarded to a person under subsection (1)(a), any party to the proceeding that the Tribunal considers appropriate; or

(b) if they are awarded to a party to the proceeding under subsection (1)(b), each other party to the proceeding.

(3) Subject to any rules made by the Chief Justice under section 140, Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A) applies to the award of costs, and to the taxation of any costs awarded, by the Tribunal under subsection (1).

135. Notification of determinations or orders of Tribunal

(1) The Tribunal must, as soon as practicable after the conclusion of a proceeding, deliver—

(a) its determination in respect of the proceeding, and the reasons for making the determination; and

(b) any order made under section 134 in relation to the proceeding, and the reasons for making the order.

(2) If a sitting of the Tribunal relating to a proceeding, or any part of a sitting, is held in private, the Tribunal may by order prohibit the publication or disclosure, wholly or partly, of any determination or order, or any reasons for any determination or order, mentioned in subsection (1)(a) or (b).

(3) A person who, without reasonable excuse, fails to comply with an order of the Tribunal under subsection (2) commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

136. Form and proof of determinations or orders of Tribunal

(1) A determination or order made by the Tribunal must be recorded in writing and signed by the chairperson of the Tribunal.

(2) For any purpose, a document purporting to be a determination or order of the Tribunal and to be signed by its chairperson must, in the absence of evidence to the contrary, be regarded as a determination or order of the Tribunal duly made and signed, without proof of its making or proof of signature, or proof that the person signing the determination or order was in fact the chairperson.

137. Registration of determinations or orders made by Tribunal

(1) The Court may, on written notice given by the Tribunal in the manner prescribed by rules made by the Chief Justice under section 140, register a determination or order of the Tribunal in the Court.

(2) A determination or order registered under subsection (1) is for all purposes to be regarded as a determination or order of the Court made within its jurisdiction.

138. Application for stay of execution of determinations or orders of Tribunal

(1) A party to a proceeding may, at any time after the conclusion of the proceeding, apply to the Tribunal for a stay of execution of a determination or order of the Tribunal relating to the proceeding.

(2) On an application under subsection (1), the Tribunal may, if the Tribunal considers it appropriate to do so, by order grant the stay, subject to any conditions as to costs, payment of money into the Tribunal or otherwise that the Tribunal considers appropriate.

139. No other right of appeal

Any determination or order of the Tribunal is final and, except as provided in section 141, is not subject to appeal.

140. Rules by Chief Justice

The Chief Justice may make rules—

(a) with respect to the joinder as parties to a proceeding before the Tribunal of entities that—

(i) have a common interest in the matter;

(ii) have claims arising out of the same, similar or related circumstances; or

(iii) for some other reason it is desirable to join as parties;

(b) with respect to the making of an application for review by one entity as the representative of 2 or more entities;

(c) providing for the award of costs under section 134 and the taxation of those costs;

(d) prescribing the manner in which the Tribunal is to give notice to the Court of determinations or orders of the Tribunal under section 137;

(e) regulating—

(i) the procedure for applications for leave to appeal under section 141, and for the hearing of the applications; and

(ii) the procedure for the hearing of appeals under section 141;

(f) requiring the payment of the fees specified in the rules for any matter relating to applications to the Tribunal;

(g) providing for matters of procedure or other matters relating to applications to the Tribunal, that are not provided for in this Part or Schedule 9;

(h) providing for the issue or service of any document (however described) for the purposes of this Part or Schedule 9; or

(i) prescribing any matter that this Part provides is, or may be, prescribed by rules made by the Chief Justice.

141. Party may appeal to Court of Appeal with leave

(1) A party to a proceeding who is dissatisfied with a determination of the Tribunal may, with the leave of a judge of the Court of Appeal, appeal to the Court of Appeal against the determination on a question of law.

(2) Leave to appeal may be granted in respect of a particular issue arising out of a determination of the Tribunal.

(3) Leave to appeal may be granted subject to any conditions that the judge hearing the application for leave considers necessary in order to secure the just, expeditious and economical disposal of the appeal.

(4) Leave to appeal must not be granted unless the judge hearing the application for leave is satisfied that—

(a) the appeal has a reasonable prospect of success; or

(b) there is some other reason in the interests of justice why the appeal should be heard.

(5) No appeal lies from a decision of the Court of Appeal as to whether or not leave to appeal to it should be granted.

142. Powers of Court of Appeal

(1) On an appeal from a determination of the Tribunal, the Court of Appeal may—

(a) allow the appeal;

(b) dismiss the appeal;

(c) vary or set aside the determination and, if the determination is set aside, substitute for the determination any other determination it considers appropriate; or

(d) remit the matter in question to the Tribunal with any direction that it considers appropriate, which may include a direction to make a fresh determination in respect of any matter specified by the Court of Appeal.

(2) If the Court of Appeal under subsection (1)(c) varies, or substitutes a determination for, a determination of the Tribunal, the determination as varied or the substituted determination must be one that the Tribunal had power to make.

(3) On an appeal, the Court of Appeal—

(a) may make any order as to costs that it considers appropriate; and

(b) if it under subsection (1)(a) allows the appeal, or under subsection (1)(c) varies or sets aside a determination of the Tribunal, may by an order mentioned in paragraph (a) direct that there is to be included in any costs to be paid by the respondent to the appellant—

(i) the costs reasonably incurred by the appellant in relation to the proceeding before the Tribunal and the application to the Tribunal in question; or

(ii) any fixed sum that it considers reasonable in respect of the costs mentioned in subparagraph (i).

143. No stay of execution on appeal

(1) Without affecting section 138, the lodging of an appeal under section 141 does not by itself operate as a stay of execution of a determination of the Tribunal unless the Court of Appeal otherwise orders.

(2) Any order under subsection (1) may be subject to any conditions as to costs, payment of money into court or otherwise that the Court of Appeal considers appropriate.

Part 8

Clawback of Remuneration

144. Interpretation

In this Part—

controlled period (追溯期), in relation to a within scope financial institution, means the period of 3 years, or any longer period fixed by the Court under section 145(5), immediately preceding the date on which the resolution of the financial institution was initiated;

officer (高級人員), in relation to a within scope financial institution, means a person who is—

(a) a director or shadow director of the financial institution;

(b) the chief executive officer or deputy chief executive officer of the financial institution;

(c) a person who is employed by, or acts for or on behalf of or under an arrangement with, the financial institution and who as such—

(i) is principally responsible (alone or jointly with others) for—

(A) the management of part of the business of the financial institution; or

(B) the performance of one or more of the control functions of the financial institution; or

(ii) has the potential to have a material impact on the risk profile of the financial institution; or

(d) a person who was a person mentioned in paragraph (a), (b) or (c);

shadow director (幕後董事) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622).

145. Application to Court

(1) A resolution authority may, at any time after it has initiated the resolution of a within scope financial institution, apply to the Court for a clawback order against an officer of that institution.

(2) An application under subsection (1) is not subject to any period of limitation prescribed by the Limitation Ordinance (Cap. 347).

(3) The Court may make a clawback order against an officer if satisfied that—

(a) the officer, in performing his or her functions, acted or omitted to act in a way that caused, or materially contributed to, the financial institution ceasing, or being likely to cease, to be viable; and

(b) the act was done, or the omission was made, intentionally, recklessly or negligently.

(4) If the Court decides to make a clawback order against an officer, it must, in determining the extent to which the remuneration of the officer is to be covered by that order, take into account the extent to which the act or omission of the officer contributed to the financial institution ceasing, or being likely to cease, to be viable.

(5) The Court may, on an application made by the resolution authority, extend the controlled period applicable to the officer by a further period of up to 3 years if satisfied that any act or omission on the part of the officer that caused, or materially contributed to, the financial institution

ceasing, or being likely to cease, to be viable was dishonest.

(6) The Court may make a clawback order in the case of a person mentioned in paragraph (d) of the definition of ***officer*** in section 144 irrespective of when the person ceased to be a person mentioned in paragraph (a), (b) or (c) of that definition.

(7) The standard of proof required to determine any question or issue before the Court on an application made under this section is the standard of proof applicable to civil proceedings in a court of law.

(8) The Chief Justice may make rules regulating the practice and procedure of the Court in connection with applications made under this section.

146. Clawback order

(1) A clawback order is an order that provides for either or both of the following—

(a) that the officer repays or returns all or a specified part of the fixed or variable remuneration received by the officer in respect of services provided to the financial institution during the controlled period;

(b) that the officer ceases to be entitled to receive all or a specified part of any fixed or variable remuneration that the financial institution had agreed during the controlled period to give, but had not yet given, to the officer.

(2) The making of a clawback order mentioned in subsection (1)(b) terminates any liability of the financial institution under the Employment Ordinance (Cap. 57) or an agreement mentioned in that subsection to give to the officer the remuneration covered by the order.

(3) The making of a clawback order against an officer does not affect any criminal or civil liability incurred by the officer because of any act done, or omission made, by the officer as an officer.

147. Repaid or returned remuneration

(1) This section applies to any fixed or variable remuneration that an officer of a financial institution is required by a clawback order to repay or return.

(2) The officer must provide to the resolution authority the remuneration that is required to be repaid or returned.

(3) The resolution authority must pay any remuneration provided to it under subsection (2) into the resolution funding account.

148. Prohibition of avoidance

(1) An agreement or arrangement of any kind entered into by a financial institution and an officer for avoiding the provisions of this Part is void.

(2) A person who enters into an agreement or arrangement that the person knew, or ought reasonably to have known, has as its object (whether in whole or in part) the avoidance of the provisions of this Part commits an offence and is liable—

(a) on conviction on indictment to a fine of $2,000,000 and to imprisonment for 5 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

Part 9

Deferral of Certain Disclosure Requirements

149. Interpretation

In this Part—

chief executive officer (行政總裁) has the same meaning as that given by the definition of ***chief executive*** in section 308(1) of the Securities and Futures Ordinance (Cap. 571);

director (董事) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

listed entity (上市實體) means an entity that is listed on a recognized stock market and that is—

(a) a within scope financial institution; or

(b) a group company of a within scope financial institution;

notifiable interest (須具報權益), in relation to voting shares of an entity, has the meaning given by section 311(3) of the Securities and Futures Ordinance (Cap. 571);

responsible resolution authority (負責處置機制當局), in relation to a listed entity, means—

(a) if the listed entity is a within scope financial institution, the resolution authority of the listed entity; or

(b) if the listed entity is a group company of a within scope financial institution, the resolution authority of the within scope financial institution or, if the within scope financial institution is a member of a cross-sectoral group, the lead resolution authority of the group.

150. Deferral of requirement to disclose inside information

(1) This section applies in relation to a listed entity, or a group company of a listed entity, to which a stabilization option has not been applied.

(2) The responsible resolution authority may, by notice in writing served on any of the following entities, defer for a period specified in the notice, not exceeding 72 hours, the requirement of the entity to disclose under section 307B of the Securities and Futures Ordinance (Cap. 571) information of a kind specified in the notice—

(a) the listed entity;

(b) an entity acquiring the whole or any part of the business, assets or securities of the listed entity.

(3) The responsible resolution authority may only act under subsection (2) if it is of the opinion that the following are satisfied—

(a) it is reasonably likely that the listed entity or a group company of the listed entity will have a stabilization option applied to it;

(b) the disclosure of the specified information is reasonably likely to—

(i) cause or contribute to the listed entity, or a group company of the listed entity, ceasing to be viable; or

(ii) impede the ability of the responsible resolution authority to achieve an orderly resolution of the listed entity or a group company of the listed entity;

(c) the specified information is confidential and its confidentiality can be preserved.

(4) The responsible resolution authority may, by notice in writing served on the entity mentioned in subsection (2), extend (or further extend) by up to 72 hours the period for which the requirement to disclose the specified information is deferred if it is of the opinion that the conditions mentioned in subsection (3) are still satisfied.

(5) Before acting under subsection (2) or (4), the responsible resolution authority must consult the Securities and Futures Commission if the Commission is not the responsible resolution authority.

(6) The responsible resolution authority may act under subsection (2) or (4)—

(a) on its own initiative; or

(b) on a request for it to so act made by an entity mentioned in subsection (2).

(7) During any period during which the requirement to disclose specified information under section 307B of the Securities and Futures Ordinance (Cap. 571) is deferred under this section, any other requirement of the listed entity or an entity acquiring the whole or any part of the business, assets or securities of the listed entity to comply with a duty of disclosure arising under rules made by a recognized exchange company under section 23 of the Securities and Futures Ordinance (Cap. 571) or by the Securities and Futures Commission under section 36(1) of that Ordinance is also deferred by force of this section.

(8) A deferral under this section ceases to have effect on the earlier of—

(a) the conditions mentioned in subsection (3) ceasing to be satisfied; or

(b) the expiry of the period for which the requirement to comply with the duty of disclosure is deferred.

(9) The responsible resolution authority must give notice to an entity to which a deferral under this section applied, of it ceasing to have effect as soon as practicable after that occurs.

(10) On a deferral under this section ceasing to have effect, the entity to which it applied must comply with the disclosure requirement under section 307B of the Securities and Futures Ordinance (Cap. 571) as soon as practicable after being notified under subsection (9).

(11) This section has effect despite anything in Part XIVA of the Securities and Futures Ordinance (Cap. 571).

151. Deferral of requirement to disclose interests and short positions

(1) This section applies in relation to a listed entity, or a group company of a listed entity, to which a stabilization option has not been applied.

(2) The responsible resolution authority may, by notice in writing served on any of the following entities or persons, defer for a period specified in the notice, not exceeding 72 hours, a requirement of the entity or person to comply with a duty of disclosure arising under section 310 or 341 of the Securities and Futures Ordinance (Cap. 571) in relation to interests in shares or debentures, or short positions in shares, of the listed entity specified in the notice—

(a) the listed entity;

(b) an entity acquiring the whole or any part of the business, assets or securities of the listed entity;

(c) a director or chief executive officer of the listed entity;

(d) a person who has a notifiable interest in voting shares of an entity mentioned in paragraph (a) or (b).

(3) The responsible resolution authority may only act under subsection (2) if it is of the opinion that the following are satisfied—

(a) it is reasonably likely that the listed entity, or a group company of the listed entity, will have a stabilization option applied to it;

(b) the disclosure of the interests in shares or debentures or short positions in shares of the listed entity is reasonably likely to—

(i) cause or contribute to the listed entity, or a group company of the listed entity, ceasing to be viable; or

(ii) impede the ability of the responsible resolution authority to achieve an orderly resolution of the listed entity or a group company of the listed entity;

(c) information about the interests in shares or debentures or short positions in shares of the listed entity is confidential and its confidentiality can be preserved.

(4) The responsible resolution authority may, by notice in writing served on an entity or person mentioned in subsection (2), extend (or further extend) by up to 72 hours the period for which the requirement to comply with the duty of disclosure is deferred if it is of the opinion that the conditions mentioned in subsection (3) are still satisfied.

(5) Before acting under subsection (2) or (4), the responsible resolution authority must consult the Securities and Futures Commission if the Commission is not the responsible resolution authority.

(6) The responsible resolution authority may act under subsection (2) or (4)—

(a) on its own initiative; or

(b) on a request for it to so act made by an entity or person mentioned in subsection (2).

(7) A deferral under this section ceases to have effect on the earlier of—

(a) the conditions mentioned in subsection (3) ceasing to be satisfied; or

(b) the expiry of the period for which the requirement to comply with the duty of disclosure is deferred.

(8) The responsible resolution authority must give notice to an entity or person to which a deferral under this section applied, of it ceasing to have effect as soon as practicable after that occurs.

(9) On a deferral under this section ceasing to have effect, the entity or person to which it applied must comply with the disclosure requirement under section 310 or 341 (as the case requires) of the Securities and Futures Ordinance (Cap. 571) within 3 business days.

(10) This section has effect despite anything in Part XV of the Securities and Futures Ordinance (Cap. 571).

152. Suspension of dealings in securities

(1) This section applies if a resolution authority has served a notice on a listed entity under section 150(2).

(2) Despite anything to the contrary in the Securities and Futures (Stock Market Listing) Rules (Cap. 571 sub. leg. V), the Securities and Futures Commission is not under any obligation while the deferral under section 150 is in effect to consider exercising power under section 8 of

those Rules to direct the suspension of dealings in any securities of the listed entity.

(3) The resolution authority may, by notice in writing served on a recognized exchange company, direct it to suspend all dealings in any securities of the listed entity until notified in writing by the resolution authority that dealings in those securities may recommence.

(4) The resolution authority may, by notice in writing served on a recognized exchange company, direct it not to exercise any power that it may have to suspend dealings in any securities of the listed entity until notified in writing by the resolution authority that the prohibition on the exercise of the power is withdrawn.

(5) Before acting under subsection (3) or (4), the resolution authority must consult the Securities and Futures Commission if the Commission is not the resolution authority.

(6) A recognized exchange company must comply with a notice served under subsection (3) or (4) on it.

(7) The resolution authority must, as soon as practicable after becoming aware that the deferral under section 150 has ceased to have effect, by notice in writing served on a recognized exchange company on which it has served a notice under subsection (3) or (4), inform the exchange company that the direction contained in the notice has ceased to have effect.

153. Suspension of certain obligations

(1) This section applies in relation to a listed entity, or a group company of a listed entity, to which a stabilization option mentioned in section 33(2)(d) (bail-in) has been applied but the bail-in of which is ongoing.

(2) Any requirement of the listed entity, or of an entity acquiring the whole or any part of the business, assets or securities of the listed entity, to disclose information under section 307B of the Securities and Futures Ordinance (Cap. 571) is suspended by force of this subsection until the suspension is lifted by the resolution authority by a notice given under subsection (5) to the entity.

(3) Any requirement of an entity or person to comply with a duty of disclosure arising under section 310 or 341 of the Securities and Futures Ordinance (Cap. 571) in relation to interests in shares or debentures or short positions in shares of the listed entity is suspended by force of this subsection until the suspension is lifted by the resolution authority by a notice given under subsection (5) to the entity or person.

(4) Any requirement of the listed entity, or of an entity acquiring the whole or any part of the business, assets or securities of the listed entity, to comply with a duty of disclosure arising under rules made by a recognized exchange company under section 23 of the Securities and Futures Ordinance (Cap. 571) or by the Securities and Futures Commission under section 36(1) of that Ordinance is suspended by force of this subsection until the suspension is lifted by the resolution authority by a notice given under subsection (5) to the entity.

(5) The responsible resolution authority may give notice to an entity or person to which a suspension of a requirement applies by force of subsection (2), (3) or (4) that the suspension is lifted with effect from a date or time specified in the notice.

(6) The listed entity or a group company of the listed entity is, by force of this subsection, exempt from any obligation to obtain the approval of shareholders in respect of any matter arising under contract or legislation or in any other way.

(7) All persons are, by force of this subsection, exempt from any obligation arising in relation to the listed entity under the Code on Takeovers and Mergers (including an obligation to make an offer for shares or to enter into a takeover or merger transaction or to make an announcement of an offer or disclose information of any kind).

(8) All dealings in any securities of the listed entity on a recognized stock market are suspended by force of this subsection until the suspension is lifted by the resolution authority by a notice served under subsection (9).

(9) The resolution authority must, as soon as practicable after becoming aware that a suspension under subsection (2) has ceased to have effect, by notice in writing served on the listed entity, inform it that dealings in the securities of the listed entity on a recognized stock market are no longer suspended.

(10) The resolution authority must send to the Securities and Futures Commission and the recognized exchange company a copy of a notice under subsection (9) as soon as practicable after serving it on the listed entity.

Part 10

Information Gathering, Inspection and Investigation Powers

Division 1—Preliminary

154. Interpretation

In this Part—

authorized person (獲授權人士) means a person authorized by a resolution authority under section 156(1);

business premises (業務處所), in relation to a controlled entity or a third party entity, includes any premises (other than domestic premises) used by the entity in connection with its business;

controlled entity (受規管實體) means—

(a) a within scope financial institution; or

(b) a group company of a within scope financial institution;

domestic premises (住宅處所) means any premises used exclusively for residential purposes;

investigator (調查員) means a person appointed by a resolution authority under section 157(1);

third party entity (第三方實體) means an entity other than a controlled entity.

155. When powers are exercisable

(1) The powers conferred by this Part are exercisable with respect to a within scope financial institution, or a group company of a within scope financial institution, whether

or not the financial institution has ceased, or is likely to cease, to be viable and whether or not resolution of the financial institution has been initiated.

(2) The powers conferred by this Part are only exercisable with respect to a third party entity if the resolution authority has reasonable cause to believe that—

(a) the third party entity has information, or is in possession of a record or document, relating to a controlled entity; and

(b) the information, record or document cannot be obtained from the controlled entity, including by the exercise of powers under this Part.

156. Authorization of persons

(1) A resolution authority may, in writing, authorize a person, or a person belonging to a class of persons, as an authorized person for the purposes of this Part.

(2) The resolution authority must provide an authorized person with a copy of the instrument of authorization.

(3) An entity in relation to which an authorized person is exercising a power under this Part may request the authorized person to produce a copy of the instrument of authorization.

(4) An authorized person must, as soon as reasonably practicable after being requested to do so under subsection (3), produce a copy of the instrument of authorization for inspection.

157. Appointment of investigator

(1) A resolution authority may, in writing, appoint a person as an investigator for the purposes of this Part.

(2) The resolution authority must provide an investigator with a copy of the instrument of appointment.

(3) An entity in relation to which an investigator is exercising a power under this Part may request the investigator to produce a copy of the instrument of appointment.

(4) An investigator must, as soon as reasonably practicable after being requested to do so under subsection (3), produce a copy of the instrument of appointment for inspection.

Division 2—Information Gathering

158. Power to demand information, records or documents

(1) A resolution authority may, by notice in writing given to a controlled entity or a third party entity, require it—

(a) to provide (including periodically) specified information or information of a specified description; or

(b) to produce (including periodically) specified records or documents or records or documents of a specified description.

(2) The information, records or documents specified in a notice under subsection (1) must be information, records or documents that the resolution authority reasonably requires in connection with the performance of its functions under this Ordinance.

(3) A notice under subsection (1) may specify the period within which (or, if required periodically, the date by which), and the manner and form in which, the information is to be provided or the record or document produced.

(4) The resolution authority may, by notice in writing given to a controlled entity or a third party entity, require it—

(a) to verify any information provided by it under this section in any manner that the resolution authority may reasonably require, which may include by statutory declaration, and within any period that the resolution authority may reasonably require; or

(b) to authenticate any record or document produced by it under this section in any manner that the resolution authority may reasonably require and within any period that the resolution authority may reasonably require.

(5) If information is not provided as required under subsection (1) for the reason that it is not within the knowledge of the controlled entity or third party entity, the resolution authority may, by notice in writing given to the entity, require it to verify, within any period that the resolution authority may reasonably require, that fact and reason by statutory declaration.

(6) If a record or document is not produced as required under subsection (1) for the reason that it is not in the possession of the controlled entity or third party entity, the resolution authority may, by notice in writing given to the entity, require it to verify, within any period that the resolution authority may reasonably require, that fact and reason by statutory declaration.

159. Offences in relation to section 158

(1) A controlled entity or third party entity that, without reasonable excuse, fails to comply with a requirement under section 158(1), (4), (5) or (6) commits an offence and is liable—

(a) on conviction on indictment to a fine of $200,000 and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 5 and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues.

(2) A controlled entity or a third party entity commits an offence if—

(a) in purported compliance with a requirement under section 158(1), (4), (5) or (6), it provides any information, or produces any record or document, that is false or misleading in a material particular; and

(b) it knows that, or is reckless as to whether, the information, record or document is false or misleading in a material particular.

(3) A controlled entity or third party entity that commits an offence under subsection (2) is liable—

(a) on conviction on indictment to a fine of $1,000,000; or

(b) on summary conviction to a fine at level 6.

(4) If a controlled entity or third party entity commits an offence under subsection (1) or (2), an officer of the entity also commits an offence under that subsection if the officer—

(a) authorized or permitted the commission of the offence by the entity; or

(b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the entity.

(5) An officer who commits an offence under subsection (1) is liable—

(a) on conviction on indictment to a fine of $200,000 and to imprisonment for one year and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues.

(6) An officer who commits an offence under subsection (2) is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(7) An officer of an entity may commit an offence under subsection (1) or (2) whether or not the entity has been prosecuted for, or found guilty of, an offence under that subsection.

Division 3—Inspection

160. Powers of inspection

(1) This section applies in relation to a controlled entity.

(2) An authorized person may exercise a power under this section if, in the opinion of the authorized person, doing so will enable the authorized person to inspect a record or document, or otherwise obtain information, that will assist the resolution authority in performing its functions under this Ordinance.

(3) A resolution authority may cause an authorized person to exercise a power under this section if it has reasonable cause to believe that—

(a) an examination of the records or documents of a controlled entity needs to be made to find out whether the resolution authority needs to exercise any power under this Ordinance in respect of a within scope financial institution, or a holding company or affiliated operational entity of a within scope financial institution, and, if so, which power; or

(b) the manner in which a within scope financial institution or a holding company of a within scope financial institution has engaged, or is engaging, in any activity is preventing effective resolution planning being done under this Ordinance or is otherwise not conducive to facilitating the resolution of the financial institution.

(4) An authorized person may at any reasonable time—

(a) enter the business premises of the controlled entity;

(b) inspect, and make copies or otherwise record details of, any record or document located, or accessible from, there; and

(c) make inquiries of the controlled entity concerning any record or document mentioned in paragraph (b).

(5) In exercising a power under subsection (4)(b) or (c), an authorized person may require the controlled entity—

(a) to give the authorized person access to any record or document mentioned in subsection (4)(b) and, for that purpose, to produce it within the time and at the place specified by the authorized person; and

(b) to answer any question regarding the record or document.

(6) If a record or document is not produced as required under subsection (5)(a) for the reason that it is not in the possession of the controlled entity, the resolution authority may, by notice in writing given to the entity, require it to verify, within any period that the resolution authority may reasonably require, that fact and reason by statutory declaration.

(7) If a controlled entity gives an answer as required under subsection (5)(b), the authorized person may, in writing, require the entity to verify the answer in any manner that the authorized person may reasonably require, which may include by statutory declaration, and within any period that the authorized person may reasonably require.

(8) If a controlled entity does not give an answer as required under subsection (5)(b) for the reason that it is not within the entity's knowledge, the authorized person may, in writing, require the entity to verify, within any period that the authorized person may reasonably require, that fact and reason by statutory declaration.

161. Offences in relation to section 160

(1) A controlled entity that, without reasonable excuse, fails to comply with a requirement under section 160(5), (6), (7) or (8) commits an offence and is liable—

(a) on conviction on indictment to a fine of $200,000 and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 5 and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues.

(2) A controlled entity commits an offence if—

(a) in purported compliance with a requirement under section 160(5), (6), (7) or (8), it produces any record or document, or gives any answer, that is false or misleading in a material particular; and

(b) it knows that, or is reckless as to whether, the record, document or answer is false or misleading in a material particular.

(3) A controlled entity that commits an offence under subsection (2) is liable—

(a) on conviction on indictment to a fine of $1,000,000; or

(b) on summary conviction to a fine at level 6.

(4) If a controlled entity commits an offence under subsection (1) or (2), an officer of the entity also commits an offence under that subsection if the officer—

(a) authorized or permitted the commission of the offence by the entity; or

(b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the entity.

(5) An officer who commits an offence under subsection (1) is liable—

(a) on conviction on indictment to a fine of $200,000 and to imprisonment for one year and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues.

(6) An officer who commits an offence under subsection (2) is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(7) An officer of an entity may commit an offence under subsection (1) or (2) whether or not the entity has been prosecuted for, or found guilty of, an offence under that subsection.

Division 4—Investigation

162. Powers of investigation

A resolution authority may cause an investigation under section 163 to be carried out by an investigator if it has reasonable cause to believe that—

(a) an offence under this Ordinance may have been committed; or

(b) a direction given to, or requirement imposed on, a controlled entity under this Ordinance has not been complied with.

163. Powers of investigator to require production of records or documents or attendance for examination

(1) This section applies to a person whom an investigator, carrying out an investigation in any circumstance set out in section 162, has reasonable cause to believe—

(a) to be in possession of a record or document that contains, or is likely to contain, information relevant to any matter under investigation by the investigator; or

(b) to be otherwise in possession of information relevant to a matter mentioned in paragraph (a).

(2) An investigator may, in writing, require a person—

(a) to produce to the investigator, within the time and at the place specified in the requirement, any record or document specified in the requirement that—

(i) is or may be relevant to any matter under investigation; and

(ii) is in the person's possession;

(b) to attend before the investigator at the time and place specified in the requirement, and answer any question relating to any matter under investigation that may be raised by the investigator;

(c) to respond to any written question relating to any matter under investigation that may be raised by the investigator; and

(d) to give the investigator all other assistance in connection with the investigation that the person is reasonably able to give.

(3) If a person produces a record or document as required under subsection (2)(a), the investigator may require the person to give an explanation or further particulars in respect of the record or document.

(4) On or before imposing a requirement under subsection (2) or (3), the investigator must ensure that the person is informed or reminded of the limitations imposed by section 165 on the admissibility in evidence of the

requirement and of the question and answer or response, or the explanation or further particulars.

(5) If a record or document is not produced as required under subsection (2) for the reason that it is not in the possession of the person, the resolution authority may, by notice in writing given to the person, require the person to verify, within any period that the resolution authority may reasonably require, that fact and reason by statutory declaration.

(6) If a person gives any answer, response, explanation or further particulars as required under subsection (2) or (3), the investigator may, in writing, require the person to verify, within the time specified in the requirement, the answer, response, explanation or further particulars by statutory declaration.

(7) If a person does not give any answer, response, explanation or further particulars as required under subsection (2) or (3) for the reason that the information concerned is not within the person's knowledge, the investigator may, in writing, require the person to verify, within the time specified in the requirement, that fact and reason by statutory declaration.

(8) An investigator—

(a) may make interim reports on an investigation to the resolution authority; and

(b) must make interim reports on an investigation to the resolution authority as soon as reasonably practicable after being required by the resolution authority to do so.

(9) An investigator must, as soon as reasonably practicable after completing an investigation, make a final report on the investigation to the resolution authority.

164. Offences for non-compliance with requirements imposed under section 163

(1) A person commits an offence if the person, without reasonable excuse, fails to comply with a requirement under section 163(2), (3), (5), (6) or (7).

(2) A person who commits an offence under subsection (1) is liable—

(a) on conviction on indictment to a fine of $200,000 and to imprisonment for one year and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 5 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues.

(3) A person commits an offence if—

(a) in purported compliance with a requirement under section 163(2), (3), (5), (6) or (7), the person produces any record or document, or gives any answer, response, explanation or further particulars, that is or are false or misleading in a material particular; and

(b) the person knows that, or is reckless as to whether, the record or document, or the answer, response, explanation or further particulars, is or are false or misleading in a material particular.

(4) A person who commits an offence under subsection (3) is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(5) A person is not excused from complying with a requirement under section 163 only on the ground that to do so might tend to incriminate the person.

165. Use of incriminating evidence in proceedings

(1) This section applies if—

(a) an investigator requires a person to give an answer or response to a question or to give an explanation or further particulars under section 163(2) or (3);

(b) the answer or response, or the explanation or further particulars, might tend to incriminate the person; and

(c) the person claims, before giving the answer or response or giving the explanation or further particulars, that it might so tend.

(2) Despite any other provision of this Ordinance, the requirement and the question and answer or response, or the explanation or further particulars (as the case requires), are not admissible in evidence against the person in criminal proceedings in a court of law other than those in which the person is charged in respect of the answer or response, or the explanation or further particulars, with an offence under section 164(1) or (3) or under Part V of the Crimes Ordinance (Cap. 200).

Division 5—Miscellaneous

166. Magistrates' warrants

(1) A magistrate may issue a warrant if satisfied by information on oath laid by a person mentioned in subsection (2) that there are reasonable grounds to suspect that there is, or is likely to be, on premises specified in the information any record or document that may be required to be produced under this Part.

(2) The person is—

(a) an authorized person;

(b) an investigator;

(c) a person who constitutes, or is a member of, a resolution authority; or

(d) an employee of a resolution authority.

(3) A warrant issued by a magistrate under this section authorizes a person specified in it (***specified person***) and any other person assisting in the execution of the warrant, including any police officer, to—

(a) enter the premises specified in the warrant, if necessary by force, at any time within the period of 7 days beginning on the date of the warrant; and

(b) search for, seize and remove any record or document that the specified person has reasonable cause to believe may be required to be produced under this Part.

(4) If a specified person has reasonable cause to believe that a person found on the premises is employed, or engaged to provide a service, in connection with a business that is or has been carried on on the premises, the specified person

may require that person to produce for examination any record or document—

(a) that is in the possession of that person; and

(b) that the specified person has reasonable cause to believe may be required to be produced under this Part.

(5) A specified person may, in relation to any record or document required to be produced under subsection (4)—

(a) prohibit any person found on the premises from—

(i) removing the record or document from the premises;

(ii) erasing anything from, adding anything to or otherwise altering anything in, the record or document; or

(iii) otherwise interfering with, or causing or permitting any other person to interfere with, the record or document; or

(b) take any other step that appears to the specified person to be necessary for—

(i) preserving the record or document; or

(ii) preventing interference with the record or document.

(6) Any record or document removed under a warrant may be retained—

(a) for a period, not exceeding 6 months, beginning on the day of its removal; or

(b) if the record or document is or may be required for the purpose of any criminal proceedings or any proceedings under this Ordinance, for any longer period that is necessary for those proceedings.

(7) If a specified person removes any record or document under a warrant, the specified person must, as soon as reasonably practicable after the removal, issue a receipt for the record or document.

(8) A specified person who enters any premises under a warrant must, if required by any person on the premises, produce the warrant for inspection.

(9) Section 102 of the Criminal Procedure Ordinance (Cap. 221) applies to any property that has under this section come into the possession of a resolution authority, as it applies to property that has come into the possession of the police.

(10) A person commits an offence if the person—

(a) without reasonable excuse, fails to comply with a requirement or prohibition imposed on the person under subsection (4) or (5); or

(b) without reasonable excuse, obstructs a specified person exercising a power conferred by subsection (3), (4) or (5).

(11) A person who commits an offence under subsection (10) is liable—

(a) on conviction on indictment to a fine of $2,000,000 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at level 6 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues.

167. Lien claimed on records or documents

If a person claims a lien on any record or document in the person's possession that is required to be produced under this Part—

(a) the lien does not affect the requirement to produce the record or document;

(b) no fees are payable for or in respect of the production; and

(c) the production does not affect the lien.

168. Production of information in information systems etc.

(1) This section applies in relation to information or matter contained in a record or document that is recorded—

(a) otherwise than in a legible form but is capable of being reproduced in a legible form; or

(b) in an information system.

(2) Any person who is empowered to require the production of the record or document under this Part is also empowered to require the production of a reproduction of the recording of the information or matter, or the relevant part of the recording, in a legible form or in a form that enables the information or matter to be reproduced in a legible form.

169. Inspection of records and documents seized etc.

(1) An authorized person or an investigator who has taken possession of a record or document under this Part, including a record or document removed under a warrant under section 166, must permit any other person, who would be entitled to inspect the record or document had the authorized person or the investigator not taken

possession of it, to inspect it, and to make copies or otherwise record details of it, at all reasonable times.

(2) A person who gives permission under subsection (1) may impose any reasonable condition, as to security or otherwise, that the person thinks fit.

170. Destruction of documents etc.

(1) A person commits an offence if—

(a) the person is required by an authorized person or an investigator to produce any record or document under this Part; and

(b) with intent to conceal from the authorized person or the investigator facts or matters capable of being disclosed by the record or document, the person—

(i) falsifies, conceals, destroys or otherwise disposes of the record or document; or

(ii) causes or permits the falsification, concealment, destruction or other disposal of the record or document.

(2) A person who commits an offence under subsection (1) is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

171. Recovery of expenses

(1) If an investigation is carried out under section 163 in relation to a financial institution, the Financial Secretary may order that all expenses incurred in the investigation must be defrayed by the financial institution.

(2) Expenses mentioned in subsection (1) may be recovered as a civil debt due to the Government in any court of competent jurisdiction.

Part 11

Confidentiality Requirements

172. Interpretation

(1) In this Part—

authorized statutory body (認可法定團體) means—

(a) the Insurance Authority;

(b) the Monetary Authority; or

(c) the Securities and Futures Commission.

(2) The Financial Secretary may, by notice published in the Gazette, amend subsection (1).

173. Official secrecy

(1) A person to whom this subsection applies—

(a) must preserve, and aid in preserving, secrecy with regard to any matter that comes to the person's knowledge—

(i) in the course of performing a function under, or carrying into effect, any provision of this Ordinance; or

(ii) in the course of assisting another person to perform a function under, or carry into effect, any provision of this Ordinance;

(b) must not communicate a matter mentioned in paragraph (a) to any person other than the person to whom it relates; or

(c) must not suffer or permit any person to have access to any record or document that has come into the possession of the person because of a circumstance mentioned in paragraph (a).

(2) Subsection (1) applies to—

(a) any person who holds or has held an office, appointment, employment or other role under this Ordinance, including as—

(i) a resolution authority;

(ii) a section 10 entity;

(iii) an independent valuer;

(iv) an authorized person; or

(v) an investigator;

(b) a member, employee or agent of, or a consultant or advisor to, a resolution authority;

(c) a member, employee or agent of, or a consultant or advisor to, a section 10 entity; and

(d) a member, employee or agent of, or a consultant or advisor to, an independent valuer.

(3) Subsection (1) does not apply to the disclosure of information—

(a) as necessary for performing any function under this Ordinance or for carrying any provision of this Ordinance into effect;

(b) by a resolution authority if, in the opinion of the resolution authority, the disclosure is necessary in the interests of promoting and maintaining the stability and effective working of the financial system of Hong Kong;

(c) for seeking advice from, or the giving of advice by, counsel or a solicitor or other professional advisor acting or proposing to act in a professional capacity in connection with a matter arising under this Ordinance;

(d) at the request of the Secretary for Justice, with a view to the institution of, or otherwise for the purpose of, any criminal proceedings or any investigation of a criminal complaint;

(e) in connection with any other legal proceedings arising out of this Ordinance;

(f) to an appeal tribunal;

(g) by a resolution authority to the Financial Secretary, the Secretary for Justice or a person who constitutes or is a member of an authorized statutory body if, in the opinion of the resolution authority—

(i) the disclosure will enable or assist the recipient of the information to perform the recipient's functions; and

(ii) it is not contrary to the resolution objectives or the orderly resolution of a within scope financial institution that the information should be so disclosed;

(h) by a resolution authority (***disclosing authority***) to another resolution authority if, in the opinion of the disclosing authority—

(i) disclosing the information—

(A) is not inconsistent with the achievement of its objectives under this Ordinance; and

(B) will enable or assist the other resolution authority to perform its functions, and achieve its objectives, under this Ordinance; and

(ii) the other resolution authority is subject to confidentiality requirements and safeguards that are adequate having regard to the nature and sensitivity of the information;

(i) by a resolution authority to the Hong Kong Deposit Protection Board established by section 3 of the Deposit Protection Scheme Ordinance (Cap. 581) for enabling or assisting the Board to perform its functions under that Ordinance;

(j) to any person covered by a prohibition in subsection (1) if the disclosure will enable or assist that person to assist the resolution authority to perform its functions under this Ordinance;

(k) by a resolution authority with the consent of—

(i) the person from whom the information was obtained or received; and

(ii) if the information does not relate to that person, the person to whom it relates; or

(l) that has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this subsection or section 175.

(4) Subsection (3)(k) does not require the resolution authority to disclose in or in relation to any civil proceedings any information that it may disclose, or has disclosed, under that subsection.

(5) Except as may be necessary for a purpose mentioned in subsection (6), a person who, in the course of performing a function under this Ordinance, receives information or any record, report, return or other document is not required—

(a) to divulge that information in any court;

(b) to produce that record, report, return or other document to any court; or

(c) to divulge or communicate to any court any matter or thing that came to the person's knowledge in the course of performing a function under this Ordinance.

(6) The purpose is—

(a) a prosecution for an offence;

(b) a winding-up by the Court under section 122 of the Banking Ordinance (Cap. 155), Part VI of the Insurance Companies Ordinance (Cap. 41) or section 212 of the Securities and Futures Ordinance (Cap. 571);

(c) an application to the Court for a clawback order; or

(d) an appeal to the Court of Appeal from a determination of the Resolution Compensation Tribunal or Resolvability Review Tribunal.

(7) If information is disclosed in any of the circumstances mentioned in subsection (3)(a) to (k), the following persons must not disclose the information, or any part of it, to any other person except with the consent of the resolution authority—

(a) the person to whom the information is disclosed;

(b) any other person obtaining or receiving the information, whether directly or indirectly, from the person mentioned in paragraph (a).

(8) However, subsection (7) does not require the Financial Secretary, as a person to whom that subsection applies, to obtain the consent of the resolution authority before disclosing to any other person any information covered by that subsection if, in the opinion of the Financial Secretary, the disclosure is necessary in the interests of promoting and maintaining the stability and effective working of the financial system of Hong Kong.

(9) A resolution authority, in disclosing any information in any of the circumstances mentioned in subsection (3) or in granting any consent under subsection (7), may impose any condition that it considers appropriate.

(10) A person who contravenes subsection (1) or (7) or who fails to comply with a condition imposed under subsection (9) commits an offence and is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

174. Confidentiality on the part of financial institutions etc.

(1) An entity or person to whom this subsection applies—

(a) must preserve, and aid in preserving, secrecy with regard to any matter that comes to the knowledge of the entity or person—

(i) in the course of performing a function under, or carrying into effect, any provision of this Ordinance; or

(ii) in the course of assisting another person to perform a function under, or carry into effect, any provision of this Ordinance;

(b) must not communicate a matter mentioned in paragraph (a) to any person other than the person to whom it relates; or

(c) must not suffer or permit any person to have access to any record or document that has come into the possession of the entity or person because of a circumstance mentioned in paragraph (a).

(2) Subsection (1) applies to—

(a) an entity that is or has been a within scope financial institution;

(b) an entity that is or has been a group company of an entity mentioned in paragraph (a); or

(c) a person who is or has been a member, officer, employee or agent of, or a consultant or advisor to, an entity mentioned in paragraph (a) or (b).

(3) Subsection (1) does not prevent an entity or person to whom that subsection applies from disclosing a matter mentioned in that subsection—

(a) for a purpose permitted by section 173(3) in the case of that entity or person; or

(b) with the consent of the resolution authority of the entity if it is or has been a within scope financial institution or of the within scope financial institution of which the entity is or has been a group company, to a body corporate that is a member of the same group of companies as the entity.

(4) If information is disclosed in reliance on subsection (3), the following persons must not disclose the information, or any part of it, to any other person except with the consent of the resolution authority—

(a) the person to whom the information is disclosed;

(b) any other person obtaining or receiving the information, whether directly or indirectly, from the person mentioned in paragraph (a).

(5) A resolution authority, in granting any consent under subsection (3)(b) or (4), may impose any condition that it considers appropriate.

(6) A person who contravenes subsection (4) and at the time of disclosure knew or ought reasonably to have known that the information, or the part of it, was previously disclosed to the person in reliance on subsection (3) commits an offence unless the person proves that the person had reasonable grounds to believe that the disclosure by the person was—

(a) with the consent of the resolution authority;

(b) for seeking advice from, or the giving of advice by, counsel or a solicitor or other professional advisor acting or proposing to act in a professional capacity in connection with a matter arising under this Ordinance; or

(c) of information that was available to the public.

(7) An entity or person that contravenes subsection (1) or fails to comply with a condition imposed under subsection (5) commits an offence.

(8) An entity or person that commits an offence under subsection (6) or (7) is liable—

(a) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

175. Disclosure of information to authorities in other places

(1) A resolution authority may disclose information to a non-Hong Kong resolution authority if in the opinion of the resolution authority—

(a) the non-Hong Kong resolution authority is subject to adequate secrecy provisions in the non-Hong Kong jurisdiction; and

(b) either—

(i) it is desirable or expedient that information should be so disclosed in the interests of furthering the resolution objectives (in so far as Hong Kong is concerned); or

(ii) the disclosure will enable or assist the non-Hong Kong resolution authority to perform its functions and it is not contrary to the interests mentioned in subparagraph (i) that the information should be so disclosed.

(2) If information is disclosed under subsection (1), the following entities must not disclose the information, or any part of it, to any other person except with the consent of the resolution authority—

(a) the non-Hong Kong resolution authority to which the information is disclosed;

(b) any other person obtaining or receiving the information, whether directly or indirectly, from that non-Hong Kong resolution authority.

(3) A resolution authority, in disclosing any information under subsection (1), may impose any condition that it considers appropriate.

Part 12

Resolution Funding Arrangements

176. Interpretation

In this Part—

proceeds of resolution (處置收益) means any money payable to the Government as a shareholder of an entity (including a bridge institution, asset management vehicle or TPO company) as a result of, or in connection with, the making of a Part 5 instrument;

public money (公帑) means money in an account that is—

(a) public moneys as defined by section 2 of the Public Finance Ordinance (Cap. 2); or

(b) any other money under the control of the Government or a public officer;

resolution funding account (處置資金帳户) means the account into, and out of which, any of the following are paid—

(a) resolution funds;

(b) proceeds of resolution;

(c) costs recovered under section 177;

(d) any remuneration provided to a resolution authority under section 147(2);

(e) any interest or fees received in respect of the use of money standing to the credit of the resolution funding account for a purpose mentioned in section 178(4)(a) or (b);

(f) any other money received in respect of a use of money standing to the credit of the resolution

funding account, including a repayment of money lent as mentioned in section 178(4)(b);

resolution funds (處置資金) means public money paid into the resolution funding account;

resolution levy (處置徵費) means a levy imposed under section 180;

surplus (餘款), in relation to the resolution funding account, means any money standing to the credit of that account after all resolution funds have been repaid, and interest payable in respect of them has been paid, under section 179.

177. Recovery of costs following application of stabilization option

(1) This section applies if conditions 1, 2 and 3 are met in the case of a within scope financial institution and, as a result, a stabilization option is applied to it or to a holding company or affiliated operational entity of it.

(2) The resolution authority that applied the stabilization option or the Financial Secretary may charge to the financial institution or, if a stabilization option has been applied to a holding company of the financial institution, to both the financial institution and the holding company, all reasonable costs properly incurred by the resolution authority or the Financial Secretary, as the case requires, in or in connection with a matter mentioned in section 178(1)(a) or (b).

(3) However, the resolution authority or the Financial Secretary must not charge costs under subsection (2) if, or to the extent that, the charging of the costs might, in the opinion of the resolution authority or the Financial Secretary (having consulted the resolution authority), undermine the meeting of the resolution objectives.

(4) Any costs charged to an entity under subsection (2) may be recovered from the entity as a civil debt due to the resolution authority or the Government, as the case requires, in any court of competent jurisdiction.

(5) Any money received in respect of costs charged to an entity under subsection (2) (including under subsection (4)) must be paid into the resolution funding account.

178. Payment from resolution funding account

(1) Subject to subsection (6), money standing to the credit of the resolution funding account may only be used by—

(a) a resolution authority in, or in connection with—

(i) preparing for the making of a Part 5 instrument in respect of an entity that, in the opinion of the resolution authority, is likely to be an entity in resolution;

(ii) the making of a Part 5 instrument in respect of an entity; or

(iii) the resolution of an entity, including payment of any compensation due under Part 6 and any associated costs; or

(b) the Financial Secretary in, or in connection with, the appointment of an independent valuer to perform functions under Part 6.

(2) Money standing to the credit of the resolution funding account may not be used to meet—

(a) expenses incurred by a resolution authority in performing functions under, or otherwise carrying out, Division 1 of Part 3 or Part 10; or

(b) general operational expenses incurred by a resolution authority unrelated to a matter mentioned in subsection (1)(a).

(3) Before a resolution authority may use money standing to the credit of the resolution funding account in applying a stabilization option to an entity, it must have regard to the extent to which the entity's own resources can be utilized, including the extent to which—

(a) liabilities of the entity can be written off or converted to enable it to absorb losses and re-establish its capital position;

(b) assets of the entity can be sold; or

(c) private sector funding can be obtained by the entity.

(4) Without limiting subsection (1)(a), the purposes for which money standing to the credit of the resolution funding account may be used by the resolution authority include—

(a) providing a guarantee or indemnity in respect of the assets or liabilities of an entity in resolution, a group company of an entity in resolution, a bridge institution, an asset management vehicle or a TPO company;

(b) lending money to an entity in resolution, a group company of an entity in resolution, a bridge institution, an asset management vehicle or a TPO company; and

(c) if necessary, providing, or underwriting the provision of, capital to an entity in resolution, a group company of an entity in resolution, a bridge institution, an asset management vehicle or a TPO company.

(5) Without limiting subsection (1)(b), the purposes for which money standing to the credit of the resolution funding account may be used by the Financial Secretary include—

(a) the payment of professional fees and expenses in connection with the appointment of an independent valuer to perform functions under Part 6; and

(b) the payment of any fees or other costs properly incurred by the independent valuer in connection with performing those functions.

(6) Any money standing to the credit of the resolution funding account that neither the resolution authority nor the Financial Secretary intends to use for a purpose mentioned in subsection (1) must be used to repay resolution funds and, to that end, must be paid—

(a) out of the resolution funding account; and

(b) into the account from which resolution funds were paid into the resolution funding account.

(7) For the purposes of subsection (6)(b), if resolution funds were paid into the resolution funding account from more than one account, the money must be paid into those accounts in proportion to the amounts paid from those accounts.

(8) Interest, by reference to prevailing market rates, may be charged to the resolution funding account on the outstanding principal amount of resolution funds until repaid under subsection (6) or section 179.

(9) The use of the resolution funding account is subject to audit in accordance with regulations made under section 185.

179. Repayment of resolution funds

(1) Any money standing to the credit of the resolution funding account on completion of the resolution must be used to repay any resolution funds or pay interest charged under section 178(8).

(2) Money used for a purpose mentioned in subsection (1) must be paid into the account out of which the resolution funds, or the resolution funds to which the interest relates, were paid into the resolution funding account and, if resolution funds were paid into the resolution funding account out of more than one account, in proportion to the amounts paid out of those accounts.

180. Resolution levy

(1) A resolution levy may only be imposed to the extent that any resolution funds have not been repaid, or interest payable in respect of them has not been paid, under section 179 on completion of the resolution.

(2) The amount to be recovered by way of a resolution levy must not be greater than the sum of any resolution funds not repaid, and interest not paid, as mentioned in subsection (1).

(3) A resolution levy may be imposed on any of the following—

(a) all within scope financial institutions within the same sector to which the entity in resolution belongs or belonged;

(b) a class of such within scope financial institutions;

(c) if the entity in resolution is a financial market infrastructure—

(i) all participants of the financial market infrastructure or a class of such participants;

(ii) all participants of other financial market infrastructure that are within scope financial institutions or a class of such participants;

(iii) all participants of recognized exchange companies designated under section 6(1)(b) as within scope financial institutions or a class of such participants; or

(iv) all clients of participants mentioned in subparagraph (i), (ii) or (iii) or a class of such clients;

(d) if the entity in resolution is a recognized exchange company—

(i) all participants of the recognized exchange company or a class of such participants;

(ii) all participants of other recognized exchange companies designated under section 6(1)(b) as within scope financial institutions or a class of such participants;

(iii) all participants of financial market infrastructure that are within scope financial institutions or a class of such participants; or

(iv) all clients of participants mentioned in subparagraph (i), (ii) or (iii) or a class of such clients.

(4) Any payment of resolution levy received by the Government (including under section 183) must be paid into the account out of which the unrepaid resolution funds, or the unrepaid resolution funds to which the interest relates, were paid into the resolution funding

account and, if unrepaid resolution funds were paid into the resolution funding account out of more than one account, in proportion to the amounts paid out of those accounts.

181. Regulations

(1) The Financial Secretary may make regulations for or with respect to the imposition of a levy in connection with the resolution of a particular entity.

(2) Without limiting subsection (1), regulations made under that subsection may—

(a) specify the entities or classes of entities by which the levy is payable;

(b) make different provision for different classes of entities, or for different entities within a class of entity;

(c) set out the methodology for the assessment of the amount of levy payable by a particular entity or class of entity including the factors on which the methodology relies such as—

(i) the size or quantum of the activities of the entity, or of any group company of the entity, measured on the basis of on and off balance sheet assets and liabilities, transaction volumes or other values;

(ii) the risks posed by the non-viability of the entity, or of any group company of the entity, to the stability and effective working of the financial system of Hong Kong, based on any factors that the Financial Secretary considers relevant which may include—

(A) financial condition;

(B) market share;

(C) substitutability;

(D) stability and variety of sources of funding;

(E) structural complexity and resolvability; and

(F) interconnectedness within the sector or across sectors; or

(iii) the extent to which the entity, or any group company of the entity, has benefitted, or would likely benefit, from the orderly resolution of the entity to which a stabilization option has been applied;

(d) prescribe the manner and timing of payment in respect of the levy;

(e) prescribe the circumstances in which, and the period for which, payment of the levy may be deferred; or

(f) prescribe any other matter relating to the levy or the obligations of entities, or classes of entities, liable to pay it.

(3) Regulations made under this section may make different provision according to when a financial institution by which a levy is payable became, or ceased to be, a within scope financial institution.

(4) Before making regulations under subsection (1), the Financial Secretary must consult—

(a) each sector likely to be affected by the levy;

(b) each resolution authority; and

(c) the general public.

(5) Regulations made under subsection (1) may not come into operation earlier than one month after the day on which they are published in the Gazette.

182. Rate of levy

(1) The Legislative Council may, on the recommendation of the Financial Secretary, by resolution prescribe the rate of a resolution levy in accordance with the regulations made by the Financial Secretary under section 181.

(2) A resolution made under subsection (1) may not come into operation earlier than one month after the day on which it is published in the Gazette.

183. Recovery of levy

Any amount of levy that is due and payable by an entity mentioned in section 180(3) may be recovered from the entity as a civil debt due to the Government in any court of competent jurisdiction.

184. Distribution of surplus

(1) The Financial Secretary may make regulations with respect to how any surplus is to be distributed.

(2) Without limiting subsection (1), regulations made under that subsection may—

(a) specify who is entitled to any share of the surplus;

(b) specify how the share of any person is to be calculated; or

(c) provide for any dispute relating to the distribution of the surplus to be determined by the Resolution Compensation Tribunal.

185. Audit regulations

(1) The Financial Secretary may make regulations—

(a) for or with respect to providing for the auditing of the accounting records and financial statements of any entity in so far as those records or statements relate to payments into or out of the resolution funding account; or

(b) for connected purposes.

(2) Regulations made under this section may—

(a) apply generally or be limited in their application by reference to specified exceptions or factors; or

(b) apply differently according to different factors of a specified kind.

(3) Regulations made under this section may prescribe offences in respect of contraventions of the regulations, and may provide for the imposition of a fine not exceeding level 6, or imprisonment for a period not exceeding one year, or both, in respect of any such offence.

(4) Regulations made under this section may not come into operation earlier than one month after the day on which they are published in the Gazette.

Part 13

Non-Hong Kong Resolution Actions

186. Interpretation

In this Part—

Hong Kong creditor (香港債權人) means a person whose rights under the law of Hong Kong as a creditor of an entity in relation to which a non-Hong Kong resolution action has been taken are, or may be, affected by the making of a recognition instrument;

Hong Kong shareholder (香港股東) means a person whose rights under the law of Hong Kong as a shareholder of an entity in relation to which a non-Hong Kong resolution action has been taken are, or may be, affected by the making of a recognition instrument.

187. Recognition of non-Hong Kong resolution actions

(1) This section applies if a resolution authority is notified of the taking of a non-Hong Kong resolution action.

(2) The resolution authority may make a recognition instrument, irrespective of whether the non-Hong Kong financial institution or non-Hong Kong group company to which the instrument relates is a within scope financial institution.

(3) A recognition instrument is an instrument that—

(a) recognizes the action; or

(b) recognizes part of the action but does not recognize the remainder.

(4) As soon as practicable after making a recognition instrument, the resolution authority must—

(a) send a copy of the instrument to the non-Hong Kong financial institution or non-Hong Kong group company to which the instrument relates;

(b) publish a copy of the instrument on its internet website; and

(c) cause notice of the making of the instrument to be published—

(i) in the Gazette; and

(ii) in 2 newspapers (one being an English language newspaper and the other being a Chinese language newspaper) chosen by the resolution authority to maximize the likelihood of the notice coming to the attention of persons likely to be affected.

(5) A resolution authority may only make a recognition instrument after having first consulted the Financial Secretary.

(6) A resolution authority must not make a recognition instrument if the resolution authority is of the opinion that—

(a) recognition would have an adverse effect on financial stability in Hong Kong;

(b) recognition would not deliver outcomes that are consistent with the resolution objectives; or

(c) recognition would disadvantage Hong Kong creditors or Hong Kong shareholders (or both) relative to other creditors or shareholders of the entity in relation to which the non-Hong Kong resolution action has been taken.

(7) In deciding whether to make a recognition instrument, a resolution authority may take into account any fiscal implications for Hong Kong of the making of the instrument.

(8) A recognition instrument takes effect at the time, or on the date, specified in it.

(9) Subject to section 193, the making of a recognition instrument has no effect on the taking of any step for the winding up of an entity affected by the non-Hong Kong resolution action.

188. Effect of recognition of non-Hong Kong resolution actions

(1) This section applies if a resolution authority makes a recognition instrument.

(2) The non-Hong Kong resolution action (or the part of it) that is recognized by the recognition instrument produces substantially the same legal effect in Hong Kong that it would have produced had it been made, and been authorized to be made, under the laws of Hong Kong.

(3) Section 25 does not apply to the making of a recognition instrument.

189. Compensation arrangements

(1) A resolution authority must not make a recognition instrument unless it is satisfied that an arrangement that meets the criteria mentioned in subsection (2) is in place.

(2) Any Hong Kong creditor or Hong Kong shareholder is eligible to claim compensation under an arrangement with the non-Hong Kong resolution authority that took the non-Hong Kong resolution action (or the part of it) that is to be recognized by the recognition instrument that is broadly consistent with the eligibility provided by section 102.

190. Incidental provision etc.

(1) A recognition instrument may include incidental, consequential or transitional provisions.

(2) In relying on subsection (1), a recognition instrument—

(a) may make provision generally or only for specified purposes, cases or circumstances; and

(b) may make different provision for different purposes, cases or circumstances.

191. Support measures

(1) This section applies if a resolution authority is notified of the taking of a non-Hong Kong resolution action.

(2) The resolution authority may for the purpose of supporting the non-Hong Kong resolution action exercise, in accordance with this Ordinance, any power that it has under this Ordinance if of the opinion that doing so would be consistent with the resolution objectives.

Part 14

Miscellaneous

192. Notice of intention to present winding up petition to resolution authority

(1) A petition for the winding up by the Court of a within scope financial institution or a holding company of a within scope financial institution may not be presented to the Court unless—

(a) the petitioner—

(i) has given notice in writing of the intention to present the petition to the relevant resolution authority or, if the financial institution or holding company is within a cross-sectoral group, the lead resolution authority of the group; and

(ii) has caused a copy of the draft petition to be attached to the notice;

(b) either—

(i) the period of 7 days, beginning on the day on which the notice is received, has ended without the relevant resolution authority or lead resolution authority initiating the resolution of the financial institution or holding company; or

(ii) the relevant resolution authority or lead resolution authority has informed the petitioner within that period of 7 days that it does not intend to initiate the resolution of the financial institution or holding company; and

(c) the following period has not ended—

(i) in the case of paragraph (b)(i), the period of 14 days beginning on the day next following the expiry of the period mentioned in that paragraph; or

(ii) in the case of paragraph (b)(ii), the period of 14 days beginning on the day on which the petitioner is informed under that paragraph.

(2) A petition presented to the Court in contravention of subsection (1) is void from the beginning.

(3) The Chief Justice may make rules regulating the practice and procedure of the Court for giving effect to subsection (1).

193. Restriction on commencement of winding up proceedings

(1) This section applies to a within scope financial institution or a holding company of a within scope financial institution—

(a) to which the stabilization option mentioned in section 33(2)(d) (bail-in) has been applied but either a bail-in provision contained in a bail-in instrument under section 58(2), or a provision made under section 61(1) or 64(3)(a), has not yet been fully implemented; or

(b) to which a non-Hong Kong resolution action, recognized by a recognition instrument, broadly comparable to action mentioned in paragraph (a) has been initiated and is ongoing.

(2) Despite any provision in any other Ordinance, winding up proceedings may not be commenced in relation to the financial institution or holding company except with the consent in writing of the resolution authority.

194. Disapplication of certain provisions

Despite anything to the contrary in the Bankruptcy Ordinance (Cap. 6), the Companies Ordinance (Cap. 622) or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)—

(a) a Part 5 instrument, a capital reduction instrument or a recognition instrument must not be set aside, annulled or avoided under any of those Ordinances; and

(b) an order must not be made by a court under any of those Ordinances for the rectification of any such instrument or for a stay on its operation.

195. Obstruction

(1) A person who, without reasonable excuse, obstructs a specified person in the performance of a function under, or in carrying into effect, any provision of this Ordinance commits an offence and is liable—

(a) on conviction on indictment to a fine of $2,000,000 and to imprisonment for 5 years and, in the case of a continuing offence, to a further fine at level 6 for every day during which the offence continues; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine at level 3 for every day during which the offence continues.

(2) In this section—

specified person (指明人士) means—

(a) a resolution authority;

(b) a section 10 entity;

(c) a member, employee or agent of a resolution authority;

(d) an independent valuer; or

(e) any person in relation to the taking by the person of any action in compliance with, or in giving effect to, a direction of a resolution authority under this Ordinance.

196. Code of practice

(1) A resolution authority may issue a code of practice about any matter relating to the functions given to it by this Ordinance.

(2) The code may, in particular—

(a) provide guidance on—

(i) the approach to, and procedures for, resolution planning and resolvability assessment (including the removal of impediments to orderly resolution);

(ii) how the resolution authority proposes to determine whether condition 1, 2 or 3 is met;

(iii) the procedure to be followed in connection with the making of any capital reduction instrument;

(iv) the selection of stabilization options;

(v) the procedure to be followed in connection with the application of any stabilization option;

(vi) the determination of compensation under Division 3 of Part 6, including assumptions to be made, principles to be applied and processes to be followed in making a valuation; or

(vii) how the resolution authority proposes to exercise its powers compatibly with the safeguard provided for by regulations made under section 75(1); or

(b) provide guidance in relation to the governance, management and control of a bridge institution, asset management vehicle or TPO company, including guidance in relation to—

(i) the setting of objectives;

(ii) the content of the articles of association;

(iii) the content of reports required under this Ordinance; and

(iv) eventual disposal.

(3) The code may also, in relation to the functions given to the resolution authority by this Ordinance, provide guidance on the operation of any provision of this Ordinance.

(4) A code of practice issued by a resolution authority under subsection (1) may incorporate or refer to a code of practice, or any part of a code of practice, from time to time issued by another resolution authority under that subsection.

197. Reasonable excuse

(1) This section applies if a provision of this Ordinance that creates an offence makes a reference to a reasonable excuse for a contravention to which the provision relates.

(2) The reference to a reasonable excuse is to be construed as providing for a defence to a charge in respect of the contravention to which the provision relates.

(3) A defendant is to be taken to have established that the defendant had a reasonable excuse for the contravention if—

(a) sufficient evidence is adduced to raise an issue that the defendant had such a reasonable excuse; and

(b) the contrary is not proved by the prosecution beyond reasonable doubt.

198. Prosecution of offences by resolution authority

(1) A resolution authority may prosecute an offence under this Ordinance, or an offence of conspiracy to commit such an offence, in its own name.

(2) Any offence prosecuted under subsection (1) must be tried before a magistrate as an offence that is triable summarily.

(3) For prosecuting an offence mentioned in subsection (1), any person to whom this subsection applies, even if he or she is not qualified to practise as counsel or to act as a solicitor under the Legal Practitioners Ordinance (Cap. 159)—

(a) may appear and plead before a magistrate in any case of which the person has charge; and

(b) has, in relation to the prosecution, all the other rights of a person qualified to practise as counsel or to act as a solicitor under that Ordinance.

(4) Subsection (3) applies to—

(a) for the Monetary Authority, a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66); and

(b) in any case, an employee of the resolution authority.

(5) This section does not derogate from the powers of the Secretary for Justice in respect of the prosecution of criminal offences.

199. Immunity from civil liability

(1) A person is not civilly liable for an act done or omitted to be done by the person in good faith in performing or purportedly performing, or assisting a person in the performance or purported performance of, a function under this Ordinance, including a function delegated to the person.

(2) Subsection (1) does not apply to an appeal tribunal or the chairperson or an ordinary member of an appeal tribunal.

200. Legal professional privilege

(1) Subject to subsection (2), this Ordinance does not affect any claims, rights or entitlements that would, apart from this Ordinance, arise on the ground of legal professional privilege.

(2) Subsection (1) does not affect any requirement made under this Ordinance to disclose the name and address of a client of a legal practitioner (whether or not the legal practitioner is qualified in Hong Kong to practise as counsel or to act as a solicitor).

201. Certain instruments are not subsidiary legislation

The following instruments are not subsidiary legislation—

(a) a notice under section 6(1)(a) or (b) or (4);

(b) a notice under section 7;

(c) a Part 5 instrument;

(d) a capital reduction instrument;

(e) a recognition instrument;

(f) a code of practice issued under section 196(1).

202. Power of resolution authorities to specify forms

(1) A resolution authority may specify the form of any document required for the purposes of this Ordinance.

(2) Subsection (1) does not apply to a document the form of which is prescribed by regulations or prescribed by rules made by the Chief Justice.

203. Amendment of Schedules

(1) The Financial Secretary may make regulations that amend Schedule 1 by—

(a) adding to the list of schemes; or

(b) amending or omitting any provision of that Schedule.

(2) The Financial Secretary may make regulations that amend Schedule 5 by adding to the list of excluded liabilities.

Part 15

Related and Consequential Amendments

Division 1—Enactments Amended

204. Enactments amended

The enactments specified in Divisions 2 to 11 are amended as set out in those Divisions.

Division 2—Amendments to Specification of Public Offices Notice (Cap. 1 sub. leg. C)

205. Schedule amended (specification of public offices)

(1) The Schedule, before the following—

"Land Registrar	Government Rights (Re-entry and Vesting Remedies) Ordinance (Cap. 126), sections 11(1) and (3) and 12(1) and (3)."

Add

"Insurance Authority	Financial Institutions (Resolution) Ordinance (23 of 2016).".

(2) The Schedule, after the entry relating to the Monetary Authority—

Add

"Monetary Authority	Financial Institutions (Resolution) Ordinance (23 of 2016).".

Division 3—Amendments to Insurance Companies Ordinance (Cap. 41)

206. Section 2 amended (interpretation)

Section 2(1)—

Add in alphabetical order

"***resolution authority*** (處置機制當局) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (23 of 2016);

Resolution Compensation Tribunal (處置補償審裁處) means—

(a) the Tribunal established by section 127(1) of the Financial Institutions (Resolution) Ordinance (23 of 2016); or

(b) an additional tribunal established under section 128(1) of that Ordinance;

Resolvability Review Tribunal (處置可行性覆檢審裁處) means—

(a) the Tribunal established by section 110(1) of the Financial Institutions (Resolution) Ordinance (23 of 2016); or

(b) an additional tribunal established under section 111(1) of that Ordinance;".

207. Section 53A amended (secrecy)

After section 53A(3)(fa)—

Add

"(fb) by the Insurance Authority to the Resolution Compensation Tribunal;

(fc) by the Insurance Authority to the Resolvability Review Tribunal;

(fd) by the Insurance Authority to a resolution authority for the purpose of enabling or assisting the resolution authority to perform its functions under the Financial Institutions (Resolution) Ordinance (23 of 2016);".

208. Section 53B amended (disclosure of information)

Before section 53B(2)—

Add

"(1C) Subject to subsection (2) and despite section 53A, the Insurance Authority may disclose information to an authority in a place outside Hong Kong if—

(a) that authority performs functions in that place broadly comparable to those of a resolution authority in Hong Kong; and

(b) in the opinion of the Insurance Authority—

(i) that authority is subject to adequate secrecy provisions in that place; and

(ii) the information is necessary to enable or assist that authority to perform functions in that place broadly comparable to those of a resolution authority in Hong Kong.".

Division 4—Amendments to Banking Ordinance (Cap. 155)

209. Section 2 amended (interpretation)

Section 2(1)—

Add in alphabetical order

"***resolution authority*** (處置機制當局) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (23 of 2016);

Resolution Compensation Tribunal (處置補償審裁處) means—

(a) the Tribunal established by section 127(1) of the Financial Institutions (Resolution) Ordinance (23 of 2016); or

(b) an additional tribunal established under section 128(1) of that Ordinance;

Resolvability Review Tribunal (處置可行性覆檢審裁處) means—

(a) the Tribunal established by section 110(1) of the Financial Institutions (Resolution) Ordinance (23 of 2016); or

(b) an additional tribunal established under section 111(1) of that Ordinance;".

210. Section 120 amended (official secrecy)

After section 120(5)(db)—

Add

"(dc) to the disclosure of information to the Resolution Compensation Tribunal;

(dd) to the disclosure of information to the Resolvability Review Tribunal;

(de) to the disclosure of information by the Monetary Authority to a resolution authority for the purpose of enabling or assisting the resolution authority to exercise its functions under the Financial Institutions (Resolution) Ordinance (23 of 2016);".

211. Section 121 amended (disclosure of information relating to authorized institutions)

After section 121(2)—

Add

"(2A) Subject to subsection (3) and despite section 120, the Monetary Authority may disclose information to an authority in a place outside Hong Kong if—

(a) that authority exercises functions in that place broadly comparable to those of a resolution authority in Hong Kong; and

(b) in the opinion of the Monetary Authority—

(i) that authority is subject to adequate secrecy provisions in that place; and

(ii) the information is necessary to enable or assist that authority to exercise functions in that place broadly comparable to those of a resolution authority in Hong Kong.".

Division 5—Amendments to Banking (Capital) Rules (Cap. 155 sub. leg. L)

212. Schedule 4B amended (qualifying criteria to be met to be Additional Tier 1 capital)

(1) Schedule 4B, section 1(q)(viii)(B)—

Repeal the full stop

Substitute a semicolon.

(2) Schedule 4B, after section 1(q)—

Add

"(r) if the instrument is issued on or after the commencement date of Part 5 of the Financial Institutions (Resolution) Ordinance (23 of 2016), the terms and conditions of the instrument contain a provision to the effect that the holder of the instrument—

(i) acknowledges that the instrument is subject to being written off, cancelled, converted or modified, or to having its form changed, in the exercise of powers under that Ordinance;

(ii) agrees to be bound by any such write off, cancellation, conversion, modification or form change; and

(iii) acknowledges that the rights of the holder are subject to anything done in the exercise of those powers.".

213. Schedule 4C amended (qualifying criteria to be met to be Tier 2 capital)

(1) Schedule 4C, section 1(k)(viii)(B)—

Repeal the full stop

Substitute a semicolon.

(2) Schedule 4C, after section 1(k)—

Add

"(l) if the instrument is issued on or after the commencement date of Part 5 of the Financial Institutions (Resolution) Ordinance (23 of 2016), the terms and conditions of the instrument contain a provision to the effect that the holder of the instrument—

(i) acknowledges that the instrument is subject to being written off, cancelled, converted or modified, or to having its form changed, in the exercise of powers under that Ordinance;

(ii) agrees to be bound by any such write off, cancellation, conversion, modification or form change; and

(iii) acknowledges that the rights of the holder are subject to anything done in the exercise of those powers.".

Division 6—Amendment to Electronic Transactions Ordinance (Cap. 553)

214. 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, after paragraph (mb)—

Add

"(mc) the Resolution Compensation Tribunal established by section 127(1) of the Financial Institutions (Resolution) Ordinance (23 of 2016) or an additional tribunal established under section 128(1) of that Ordinance;

(md) the Resolvability Review Tribunal established by section 110(1) of the Financial Institutions (Resolution) Ordinance (23 of 2016) or an additional tribunal established under section 111(1) of that Ordinance;".

Division 7—Amendments to Securities and Futures Ordinance (Cap. 571)

215. Section 10 amended (delegation and sub-delegation of Commission's functions)

(1) After section 10(2)—

Add

"(2AA) However, subsection (2)(b) does not prevent a function specified in Part 3 of Schedule 2 from being delegated to the chief executive officer of the Commission for the purpose of the application of a stabilization option under the Financial Institutions (Resolution) Ordinance (23 of 2016) to any of the following—

(a) a recognized clearing house;

(b) a recognized exchange company that is designated under section 6(1)(b) of that Ordinance as a within scope financial institution;

(c) a holding company (within the meaning of that Ordinance) or affiliated operational entity of an entity mentioned in paragraph (a) or (b).".

(2) Section 10(8), after "Part 2"—

Add

"or 3".

216. Section 307B amended (requirement for listed corporations to disclose inside information)

After section 307B(4)—

Add

"(5) This section is also subject to sections 150 and 153(2) of the Financial Institutions (Resolution) Ordinance (23 of 2016).".

217. Section 310 amended (duty of disclosure: cases in which it may arise)

After section 310(7)—

Add

"(8) This section is subject to sections 151 and 153(3) of the Financial Institutions (Resolution) Ordinance (23 of 2016).".

218. Section 341 amended (duty of disclosure by director and chief executive)

After section 341(4)—

Add

"(4A) This section is subject to sections 151 and 153(3) of the Financial Institutions (Resolution) Ordinance (23 of 2016).".

219. Section 378 amended (preservation of secrecy, etc.)

(1) After section 378(3)(ea)—

Add

"(eb) to the Resolution Compensation Tribunal;

(ec) to the Resolvability Review Tribunal;

(ed) to a resolution authority, for the purpose of enabling or assisting the resolution authority to perform its functions under the Financial Institutions (Resolution) Ordinance (23 of 2016);".

(2) After section 378(3)(g)—

Add

"(ga) to an authority in a place outside Hong Kong, if—

(i) that authority performs functions in that place broadly comparable to those of a resolution authority in Hong Kong; and

(ii) in the opinion of the Commission—

(A) that authority is subject to adequate secrecy provisions in that place; and

(B) the information is necessary to enable or assist that authority to perform functions in that place broadly comparable to those of a resolution authority in Hong Kong;".

(3) After section 378(3)(i)(ii)—

Add

"(iia) the Resolution Compensation Tribunal;

(iib) the Resolvability Review Tribunal;

(iic) a resolution authority, for the purpose of enabling or assisting the resolution authority to perform its functions under the Financial Institutions (Resolution) Ordinance (23 of 2016);".

(4) Section 378(7), after "(g)(i)"—

Add

", (ga)".

(5) Section 378(11)(a), after "(g)(i)"—

Add

", (ga)".

220. Section 381B amended (disclosure by Monetary Authority)

(1) After section 381B(1)(e)—

Add

"(ea) to the Resolution Compensation Tribunal;

(eb) to the Resolvability Review Tribunal;

(ec) for the purpose of enabling or assisting a resolution authority to perform its functions under the Financial Institutions (Resolution) Ordinance (23 of 2016), to the resolution authority;".

(2) After section 381B(3)—

Add

"(3A) Despite section 381A(2), the Monetary Authority may disclose information to an authority in a place outside Hong Kong if—

(a) that authority performs functions in that place broadly comparable to those of a resolution authority in Hong Kong; and

(b) in the opinion of the Monetary Authority—

(i) that authority is subject to adequate secrecy provisions in that place; and

(ii) the information is necessary to enable or assist that authority to perform functions in that place broadly comparable to those of a resolution authority in Hong Kong.".

221. Schedule 1, Part 1 amended (interpretation)

Schedule 1, Part 1, section 1—

Add in alphabetical order

"***affiliated operational entity*** (相聯營運實體) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (23 of 2016);

resolution authority (處置機制當局) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (23 of 2016);

Resolution Compensation Tribunal (處置補償審裁處) means—

(a) the Tribunal established by section 127(1) of the Financial Institutions (Resolution) Ordinance (23 of 2016); or

(b) an additional tribunal established under section 128(1) of that Ordinance;

Resolvability Review Tribunal (處置可行性覆檢審裁處) means—

(a) the Tribunal established by section 110(1) of the Financial Institutions (Resolution) Ordinance (23 of 2016); or

(b) an additional tribunal established under section 111(1) of that Ordinance;

stabilization option (穩定措施) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (23 of 2016);

within scope financial institution (受涵蓋金融機構) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (23 of 2016).".

222. Schedule 2 amended (Securities and Futures Commission)

(1) Schedule 2, Part 2, section 2(89)—

Repeal the full stop

Substitute a semicolon.

(2) Schedule 2, Part 2, after section 2(89)—

Add

"(90) to recommend the designation of a recognized exchange company as a within scope financial institution under section 6(1)(b) of the Financial Institutions (Resolution) Ordinance (23 of 2016);

(91) to make an application under section 145(1) of the Financial Institutions (Resolution) Ordinance (23 of 2016);

(92) to issue a code of practice under section 196 of the Financial Institutions (Resolution) Ordinance (23 of 2016).".

(3) Schedule 2, after Part 2—

Add

"Part 3

Functions of Commission Delegable for Resolution

A function mentioned in section 2(12), (13), (14), (21), (22), (23), (24), (25), (26), (27), (28), (33), (34), (35), (36), (37), (38), (39), (40), (46), (47), (48), (49) or (50) of Part 2.".

Division 8—Amendments to Deposit Protection Scheme Ordinance (Cap. 581)

223. Section 2 amended (interpretation)

Section 2(1)—

Add in alphabetical order

"***resolution authority*** (處置機制當局) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (23 of 2016);".

224. Section 46 amended (confidentiality)

After section 46(2)(g)—

Add

"(ga) to the disclosure of information by the Monetary Authority to a resolution authority for the purpose of enabling or assisting the resolution authority to perform its functions under the Financial Institutions (Resolution) Ordinance (23 of 2016);".

Division 9—Amendments to Payment Systems and Stored Value Facilities Ordinance (Cap. 584)

225. Section 2 amended (interpretation)

Section 2—

Add in alphabetical order

"***resolution authority*** (處置機制當局) has the meaning given by section 2(1) of the Financial Institutions (Resolution) Ordinance (23 of 2016);

Resolution Compensation Tribunal (處置補償審裁處) means—

(a) the Tribunal established by section 127(1) of the Financial Institutions (Resolution) Ordinance (23 of 2016); or

(b) an additional tribunal established under section 128(1) of that Ordinance;

Resolvability Review Tribunal (處置可行性覆檢審裁處) means—

(a) the Tribunal established by section 110(1) of the Financial Institutions (Resolution) Ordinance (23 of 2016); or

(b) an additional tribunal established under section 111(1) of that Ordinance;".

226. Section 50 amended (confidentiality)

(1) After section 50(3)(f)—

Add

"(fa) to the disclosure of information to the Resolution Compensation Tribunal;

(fb) to the disclosure of information to the Resolvability Review Tribunal;

(fc) to the disclosure of information by the Monetary Authority to a resolution authority for the purpose of enabling or assisting the resolution authority to perform its functions under the Financial Institutions (Resolution) Ordinance (23 of 2016);".

(2) After section 50(4A)—

Add

"(4B) Despite subsection (1), the Monetary Authority may disclose information to an authority in a place outside Hong Kong if—

(a) that authority performs functions in that place broadly comparable to those of a resolution authority in Hong Kong; and

(b) in the opinion of the Monetary Authority—

(i) that authority is subject to adequate secrecy provisions in that place; and

(ii) the information is necessary to enable or assist that authority to perform functions in that place broadly comparable to those of a resolution authority in Hong Kong.".

(3) Section 50(5)—

Repeal

"subsection (3)"

Substitute

"subsection (3) or (4B)".

227. Section 55A added

After section 55—

Add

"**55A. Saving provision**

The performance of a function under the Financial Institutions (Resolution) Ordinance (23 of 2016) has no effect on—

(a) the designation of a clearing and settlement system that has been designated for the purposes of this Ordinance by the Monetary Authority under section 4(1); or

(b) a certificate of finality issued by the Monetary Authority under section 16(3) in respect of a designated clearing and settlement system.".

Division 10—Amendments to Insurance Companies (Amendment) Ordinance 2015 (12 of 2015)

228. Section 5 amended (section 2 amended (interpretation))

Section 5(15)—

Add in alphabetical order to the new definitions

"***bridge institution*** (過渡機構)—see section 43 of the Financial Institutions (Resolution) Ordinance (23 of 2016);".

229. Section 90 amended (Schedules 1A to 1D added)

(1) Section 90, new Schedule 1D, section 1(q)—

Repeal the full stop

Substitute a semicolon.

(2) Section 90, new Schedule 1D, after section 1(q)—

Add

"(r) to defer, under section 78(2) of the Financial Institutions (Resolution) Ordinance (23 of 2016), the application of any provision of this Ordinance to an application made under this Ordinance by a bridge institution;

(s) to make an application under section 145(1) of the Financial Institutions (Resolution) Ordinance (23 of 2016);

(t) to issue a code of practice under section 196 of the Financial Institutions (Resolution) Ordinance (23 of 2016).".

230. Section 99 amended (Schedule amended)

Section 99—

Repeal

"**entry**"

Substitute

"**entries**".

231. Part 3, Division 34 added

Part 3, after Division 33—

Add

"Division 34—Amendments to Financial Institutions (Resolution) Ordinance (23 of 2016)

171. Section 2 amended (interpretation)

(1) Section 2(1), definition of ***authorized insurer***—

Repeal

"Insurance Companies Ordinance"

Substitute

"Insurance Ordinance".

(2) Section 2(1)—

Repeal the definition of *claims outstanding*

Substitute

"***claims outstanding*** (未決申索) has the meaning given by paragraph 1(1) of Part 1 of Schedule 3 to the Insurance Ordinance (Cap. 41);".

(3) Section 2(1)—

Repeal the definition of *Insurance Authority*

Substitute

"***Insurance Authority*** (保險業監管局) means the body corporate established under section 4AAA(1) of the Insurance Ordinance (Cap. 41);".

(4) Section 2(1), definition of ***insurer***—

Repeal

"Insurance Companies Ordinance"

Substitute

"Insurance Ordinance".

(5) Section 2(1), definition of ***policy holder***—

Repeal

"Insurance Companies Ordinance"

Substitute

"Insurance Ordinance".

172. Section 27 amended (requirements for consultation and for liaising with regulatory bodies)

Section 27(3), definition of ***specified Ordinance***, paragraph (a)—

Repeal

"Insurance Companies Ordinance"

Substitute

"Insurance Ordinance".

173. Section 78 amended (deferral of requirements under section 8 of Insurance Companies Ordinance)

(1) Section 78, heading—

Repeal

"**Insurance Companies Ordinance**"

Substitute

"**Insurance Ordinance**".

(2) Section 78(1)—

Repeal

"Insurance Companies Ordinance"

Substitute

"Insurance Ordinance".

(3) Section 78(2)—

Repeal

"Insurance Companies Ordinance"

Substitute

"Insurance Ordinance".

174. Section 173 amended (official secrecy)

Section 173(6)(b)—

Repeal

"Insurance Companies Ordinance"

Substitute

"Insurance Ordinance".

175. Schedule 8 amended (Resolvability Review Tribunal)

(1) Schedule 8, section 2(1)—

Repeal paragraph (e)

Substitute

"(e) is not a member of, or employed by, the Insurance Authority.".

(2) Schedule 8, section 3(2)—

Repeal paragraph (e)

Substitute

"(e) is not a member of, or employed by, the Insurance Authority.".

176. Schedule 9 amended (Resolution Compensation Tribunal)

(1) Schedule 9, section 2(1)—

Repeal paragraph (e)

Substitute

"(e) is not a member of, or employed by, the Insurance Authority.".

(2) Schedule 9, section 3(2)—

Repeal paragraph (e)

Substitute

"(e) is not a member of, or employed by, the Insurance Authority.".

177. "保險業監管局" substituted for "保險業監督"

The following provisions, Chinese text—

(a) the long title;

(b) section 2(1), definition of ***保險界實體***, paragraph (b);

(c) section 2(1), definition of ***處置機制當局***, paragraph (b);

(d) section 6(1)(a)(ii);

(e) section 27;

(f) section 78(1), (2), (3) and (4);

(g) section 172(1), definition of ***認可法定團體***, paragraph (a);

(h) Schedule 8, section 7(4)(c);

(i) Schedule 9, section 7(4)(c)—

Repeal

"保險業監督" (wherever appearing)

Substitute

"保險業監管局".".

232. Schedule 1 amended (minor amendments to Insurance Ordinance relating to replacement of "Insurance Authority" by "Authority")

Schedule 1, item 111—

Repeal

"(1A) and (2)"

Substitute

"(1A), (1C) and (2)".

Division 11—Amendments to Financial Institutions (Resolution) Ordinance (23 of 2016)

233. Section 2 amended (interpretation)

(1) Section 2(1), definition of ***authorized insurer***—

Repeal

"Insurance Companies Ordinance"

Substitute

"Insurance Ordinance".

(2) Section 2(1)—

Repeal the definition of *claims outstanding*

Substitute

"***claims outstanding*** (未決申索) has the meaning given by paragraph 1(1) of Part 1 of Schedule 3 to the Insurance Ordinance (Cap. 41);".

(3) Section 2(1)—

Repeal the definition of *Insurance Authority*

Substitute

"***Insurance Authority*** (保險業監管局) means the body corporate established under section 4AAA(1) of the Insurance Ordinance (Cap. 41);".

(4) Section 2(1), definition of ***insurer***—

Repeal

"Insurance Companies Ordinance"

Substitute

"Insurance Ordinance".

(5) Section 2(1), definition of ***policy holder***—

Repeal

"Insurance Companies Ordinance"

Substitute

"Insurance Ordinance".

234. Section 27 amended (requirements for consultation and for liaising with regulatory bodies)

Section 27(3), definition of ***specified Ordinance***, paragraph (a)—

Repeal

"Insurance Companies Ordinance"

Substitute

"Insurance Ordinance".

235. Section 78 amended (deferral of requirements under section 8 of Insurance Companies Ordinance)

(1) Section 78, heading—

Repeal

"**Insurance Companies Ordinance**"

Substitute

"**Insurance Ordinance**".

(2) Section 78(1)—

Repeal

"Insurance Companies Ordinance"

Substitute

"Insurance Ordinance".

(3) Section 78(2)—

Repeal

"Insurance Companies Ordinance"

Substitute

"Insurance Ordinance".

236. Section 173 amended (official secrecy)

Section 173(6)(b)—

Repeal

"Insurance Companies Ordinance"

Substitute

"Insurance Ordinance".

237. Part 15, Division 3 heading amended (amendments to Insurance Companies Ordinance (Cap. 41))

Part 15, Division 3, heading—

Repeal

"**Insurance Companies Ordinance**"

Substitute

"**Insurance Ordinance**".

238. Section 206A added

After section 206—

Add

"**206A. Section 2 amended (interpretation)**

Section 2(1)—

Add in alphabetical order

"***bridge institution*** (過渡機構)—see section 43 of the Financial Institutions (Resolution) Ordinance (23 of 2016);".".

239. Section 207 amended (section 53A amended (secrecy))

Section 207—

Repeal

"Insurance Authority" (wherever appearing)

Substitute

"Authority".

240. Section 208 amended (section 53B amended (disclosure of information))

Section 208—

Repeal

"Insurance Authority" (wherever appearing)

Substitute

"Authority".

241. Section 208A added

Part 15, Division 3, after section 208—

Add

"**208A. Schedule 1D amended (non-delegable functions of Authority)**

(1) Schedule 1D, section 1(q)—

Repeal the full stop

Substitute a semicolon.

(2) Schedule 1D, after section 1(q)—

Add

"(r) to defer, under section 78(2) of the Financial Institutions (Resolution) Ordinance (23 of 2016), the application of any provision of this Ordinance to an application made under this Ordinance by a bridge institution;

(s) to make an application under section 145(1) of the Financial Institutions (Resolution) Ordinance (23 of 2016);

(t) to issue a code of practice under section 196 of the Financial Institutions (Resolution) Ordinance (23 of 2016).”.”.

242. Schedule 8 amended (Resolvability Review Tribunal)

(1) Schedule 8, section 2(1)—

Repeal paragraph (e)

Substitute

“(e) is not a member of, or employed by, the Insurance Authority.”.

(2) Schedule 8, section 3(2)—

Repeal paragraph (e)

Substitute

“(e) is not a member of, or employed by, the Insurance Authority.”.

243. Schedule 9 amended (Resolution Compensation Tribunal)

(1) Schedule 9, section 2(1)—

Repeal paragraph (e)

Substitute

“(e) is not a member of, or employed by, the Insurance Authority.”.

(2) Schedule 9, section 3(2)—

Repeal paragraph (e)

Substitute

"(e) is not a member of, or employed by, the Insurance Authority.".

244. "保險業監管局" substituted for "保險業監督"

The following provisions, Chinese text—

(a) the long title;

(b) section 2(1), definition of ***保險界實體***, paragraph (b);

(c) section 2(1), definition of ***處置機制當局***, paragraph (b);

(d) section 6(1)(a)(ii);

(e) section 27;

(f) section 78(1), (2), (3) and (4);

(g) section 172(1), definition of ***認可法定團體***, paragraph (a);

(h) Schedule 8, section 7(4)(c);

(i) Schedule 9, section 7(4)(c)—

Repeal

"保險業監督" (wherever appearing)

Substitute

"保險業監管局".

Schedule 1

[ss. 8 & 203]

Protective Schemes

1. The Deposit Protection Scheme established under section 11 of the Deposit Protection Scheme Ordinance (Cap. 581).

2. The Insolvency Fund administered by the Motor Insurers' Bureau of Hong Kong that protects claims under a policy as defined by regulation 2 of the Motor Vehicles Insurance (Third Party Risks) Regulations (Cap. 272 sub. leg. A).

3. The Employees Compensation Insurer Insolvency Scheme administered by the Employees Compensation Insurer Insolvency Bureau that protects claims under a policy of insurance issued for the purposes of this Part as defined by section 38 of the Employees' Compensation Ordinance (Cap. 282).

4. Any scheme established by or under an Ordinance that is designed to secure compensation to persons in circumstances in which the insurer becomes insolvent.

Schedule 2

[ss. 96, 98 & 108]

Appointment Criteria for Independent Valuer

1. The person must not be a public officer.

2. The person must have the expertise, experience and resources that are necessary for the person to be able to perform the functions of an independent valuer in relation to the entity concerned.

3. Circumstances must not exist that would prevent, or may give rise to a reasonable perception that they would prevent, the person from being able to perform impartially and independently the functions of an independent valuer in relation to the entity concerned.

4. Without limiting section 3 of this Schedule, the person must not have an actual or material interest in common or in conflict with either of the following that could influence, or be reasonably perceived to influence, the person's judgement in the performance of the functions of an independent valuer in relation to the entity concerned—

   (a) the entity concerned;

   (b) an entity that is a member of the same group of companies as the entity concerned.

5. Without limiting section 3 of this Schedule, the person must not have offered services to, or have had business or other relationships with, any of the following at any time within the period of 3 years before being appointed as an independent valuer if those services or relationships could influence, or be reasonably perceived to influence, the person's judgement in the performance of the functions of an independent valuer in relation to the entity concerned—

(a) the entity concerned;

(b) an entity that is a member of the same group of companies as the entity concerned.

Schedule 3

[ss. 2, 39, 42,
53 & 71]

Securities Transfer Instruments

Part 1

General

1. Interpretation

In this Schedule—

prescribed entity (訂明實體) means—

(a) a within scope financial institution;

(b) a holding company of a within scope financial institution;

(c) an affiliated operational entity of a within scope financial institution;

(d) a bridge institution to which—

(i) securities issued by an entity mentioned in paragraph (a), (b) or (c) have been transferred by a securities transfer instrument; or

(ii) assets, rights or liabilities of such an entity have been transferred by a property transfer instrument;

(e) an asset management vehicle to which assets, rights or liabilities mentioned in section 50(2) have been transferred by a property transfer instrument; or

(f) a TPO company to which securities issued by an entity mentioned in paragraph (a) or (b) have been transferred by a securities transfer instrument.

2. Securities transfer instrument

(1) A securities transfer instrument is an instrument that—

(a) provides for the transfer of securities issued by a prescribed entity; and

(b) makes any other provision for the purpose of, or in connection with, the transfer of securities issued by a prescribed entity (whether or not the transfer was the subject of that instrument).

(2) A securities transfer instrument may relate to—

(a) specified securities; or

(b) securities of a specified description.

3. Procedure

As soon as practicable after making a securities transfer instrument in respect of a prescribed entity, the resolution authority must—

(a) send a copy to—

(i) the transferor;

(ii) the transferee; and

(iii) the Financial Secretary;

(b) publish a copy of the instrument on its internet website;

(c) arrange for the publication of a copy of the instrument on the internet website (if any) of the prescribed entity; and

(d) cause notice of the making of the instrument to be published—

(i) in the Gazette; and

(ii) in 2 newspapers (one being an English language newspaper and the other being a Chinese language newspaper) chosen by the resolution authority to maximize the likelihood of the notice coming to the attention of persons likely to be affected.

4. Effect of securities transfer instrument

(1) A transfer of securities and any other provision contained in a securities transfer instrument takes effect by operation of this Ordinance.

(2) A transfer takes effect at the time, or on the date, specified in the securities transfer instrument.

(3) A transfer takes effect despite any restriction arising under contract or legislation or in any other way.

(4) A securities transfer instrument may provide for a transfer to take effect freed from any trust, liability or other encumbrance (and may include provision about the extinguishment of any trust, liability or other encumbrance).

(5) A securities transfer instrument may extinguish rights to acquire securities.

(6) This section does not affect the right of a person to make, as a beneficiary under a trust or a party to a contract, a claim against a pre-resolution creditor or pre-resolution shareholder who is or was the trustee under the trust or a counterparty to the contract if any assets, rights or liabilities that are or were the subject of the trust or contract are affected by a securities transfer instrument.

(7) In this section—

restriction (限制) includes—

(a) any restriction, inability or incapacity affecting what can and cannot be assigned or transferred (whether generally or by a particular person); and

(b) a requirement for consent (however described);

transfer (轉讓) means a transfer of securities under a securities transfer instrument.

5. Continuity

(1) A securities transfer instrument may provide for a transferee to be treated for any purpose connected with the transfer as the same person as the transferor.

(2) A securities transfer instrument may provide for agreements made or other things done by, or in relation to, a transferor to be treated as made or done by, or in relation to, the transferee.

(3) A securities transfer instrument may provide for anything (including legal proceedings) that relates to anything transferred and is in the process of being done by, or in relation to, the transferor immediately before the transfer date to be continued by, or in relation to, the transferee.

(4) A securities transfer instrument may modify references (express or implied) to a transferor in an instrument or other document.

(5) A securities transfer instrument may permit or require—

(a) a transferor to provide a transferee with information and assistance; and

(b) a transferee to provide a transferor with information and assistance.

6. Conversion and delisting

(1) A securities transfer instrument may provide for securities to be converted from one form or class to another.

(2) A securities transfer instrument may provide for the listing of securities on a recognized stock market to be cancelled or dealings in securities on a recognized stock market to be suspended.

7. Removal of directors etc.

(1) A securities transfer instrument may revoke the appointment of a person as a director, or as the chief executive officer or deputy chief executive officer, of a prescribed entity with effect from a date, or the occurrence of an event, specified in the instrument.

(2) The exercise of a power under subsection (1) does not affect the rights of any party to a contract of employment or services under which a director, chief executive officer or deputy chief executive officer is employed by, or acts for or on behalf of or under an arrangement with, a prescribed entity.

8. Instruments

(1) A securities transfer instrument may permit or require the execution, issue or delivery of an instrument.

(2) A securities transfer instrument may provide for a transfer to have effect irrespective of—

(a) whether an instrument has been produced, delivered, transferred or otherwise dealt with; or

(b) registration.

(3) A securities transfer instrument may provide for the effect of an instrument executed, issued or delivered in accordance with the securities transfer instrument.

(4) A securities transfer instrument may modify or annul the effect of an instrument.

(5) A securities transfer instrument may—

(a) entitle a transferee to be registered in respect of a security; and

(b) for that purpose, require a person to effect registration.

9. Incidental provision etc.

(1) A securities transfer instrument may include incidental, consequential or transitional provisions.

(2) In relying on subsection (1), a securities transfer instrument—

(a) may make provision generally or only for specified purposes, cases or circumstances; and

(b) may make different provision for different purposes, cases or circumstances.

Part 2

Supplemental Securities Transfer Instrument

10. Supplemental securities transfer instrument

(1) This Part applies if a resolution authority has made a securities transfer instrument under Part 5 (***original instrument***).

(2) The resolution authority may make one or more supplemental securities transfer instruments.

(3) A supplemental securities transfer instrument is a securities transfer instrument that—

(a) provides for the transfer of securities that were issued by the prescribed entity before the original instrument and were not the subject of the original instrument or another supplemental securities transfer instrument; or

(b) makes provision of a kind that a securities transfer instrument may make under section 2(1)(b) of this Schedule (whether or not in connection with a transfer that was the subject of the original instrument).

(4) The possibility of making a supplemental securities transfer instrument in reliance on subsection (2) does not prevent the making of a new instrument under Part 5 (and not in reliance on subsection (2)).

(5) Section 25 does not apply to the making of a supplemental securities transfer instrument.

(6) Except as otherwise provided by this Part, Part 1 of this Schedule applies with respect to a supplemental securities transfer instrument in the same way as it applies with respect to an original instrument.

Part 3

Reverse Securities Transfer Instrument

11. Reverse securities transfer instrument

(1) This Part applies if a resolution authority has made a securities transfer instrument under Part 5 (***original instrument***) providing for the transfer of securities issued by a prescribed entity (***original transferred securities***) to another entity (***original transferee***).

(2) The resolution authority may make one or more reverse securities transfer instruments in respect of original transferred securities held by the original transferee.

(3) A reverse securities transfer instrument is a securities transfer instrument that—

(a) provides for the transfer of original transferred securities held by the original transferee to the transferor under the original instrument; and

(b) makes any other provision for the purpose of, or in connection with, the transfer of original transferred securities (whether or not the transfer was the subject of that instrument).

(4) A resolution authority must not make a reverse securities transfer instrument without the written consent of the original transferee unless the original transferee is a bridge institution, an asset management vehicle or a TPO company.

(5) Nothing in this section prevents the making of a supplemental securities transfer instrument under Part 2 of this Schedule in respect of securities that have been the subject of a reverse securities transfer instrument.

(6) Section 25 does not apply to the making of a reverse securities transfer instrument.

(7) Except as otherwise provided by this Part, Part 1 of this Schedule applies with respect to a reverse securities transfer instrument in the same way as it applies with respect to an original instrument.

Schedule 4

[ss. 2, 39, 42, 50 & 71]

Property Transfer Instruments

Part 1

General

1. Interpretation

In this Schedule—

prescribed entity (訂明實體) means—

(a) a within scope financial institution;

(b) a holding company of a within scope financial institution;

(c) an affiliated operational entity of a within scope financial institution;

(d) a bridge institution to which—

(i) securities issued by an entity mentioned in paragraph (a), (b) or (c) have been transferred by a securities transfer instrument; or

(ii) assets, rights or liabilities of such an entity have been transferred by a property transfer instrument;

(e) an asset management vehicle to which assets, rights or liabilities mentioned in section 50(2) have been transferred by a property transfer instrument; or

(f) a TPO company to which securities issued by an entity mentioned in paragraph (a) or (b) have been transferred by a securities transfer instrument.

2. Property transfer instrument

(1) A property transfer instrument is an instrument that—

(a) provides for the transfer of assets, rights or liabilities of a prescribed entity; and

(b) makes any other provision for the purpose of, or in connection with, the transfer of assets, rights or liabilities of a prescribed entity (whether or not the transfer was the subject of that instrument).

(2) A property transfer instrument may relate to—

(a) all assets, rights and liabilities;

(b) all assets, rights and liabilities subject to specified exceptions;

(c) specified assets, rights or liabilities; or

(d) assets, rights or liabilities of a specified description.

3. Procedure

As soon as practicable after making a property transfer instrument in respect of a prescribed entity, the resolution authority must—

(a) send a copy to—

(i) the transferor;

(ii) the transferee; and

(iii) the Financial Secretary;

(b) publish a copy of the instrument on its internet website;

(c) arrange for the publication of a copy of the instrument on the internet website (if any) of the prescribed entity; and

(d) cause notice of the making of the instrument to be published—

(i) in the Gazette; and

(ii) in 2 newspapers (one being an English language newspaper and the other being a Chinese language newspaper) chosen by the resolution authority to maximize the likelihood of the notice coming to the attention of persons likely to be affected.

4. Effect of property transfer instrument

(1) A transfer of assets, rights or liabilities and any other provision contained in a property transfer instrument takes effect by operation of this Ordinance.

(2) A transfer takes effect at the time, or on the date, specified in the property transfer instrument.

(3) Subject to any condition imposed under subsection (4), a transfer takes effect despite any restriction arising under contract or legislation or in any other way.

(4) A property transfer instrument may provide for a transfer to be conditional on a specified event or situation—

(a) occurring or arising; or

(b) not occurring or arising.

(5) A property transfer instrument may include provision dealing with the consequences of breach of a condition imposed under subsection (4).

(6) Consequences mentioned in subsection (5) may include any of the following—

(a) automatic vesting in the original transferor;

(b) an obligation to effect a transfer back to the original transferor;

(c) provision making a transfer or anything done in connection with a transfer void or voidable.

(7) If a property transfer instrument makes provision in respect of assets held on trust (however arising), it may also make provision about—

(a) the terms on which the assets are to be held after the instrument takes effect, which provision may remove or alter the terms of the trust but only to the extent that the resolution authority thinks it necessary or expedient for transferring—

(i) the legal or beneficial interest of the transferor in the assets; or

(ii) any powers, rights or obligations of the transferor in respect of the assets; or

(b) how any powers, provisions and liabilities in respect of the assets are to be exercisable or have effect after the instrument takes effect.

(8) Provision may not be made under subsection (7)(a) that affects the beneficial interest of a client in client assets held on trust, however arising.

(9) In subsection (7), a reference to the transferor is a reference to the transferor under the property transfer instrument.

(10) This section does not affect the right of a person to make, as a beneficiary under a trust or a party to a contract, a claim against a pre-resolution creditor or pre-resolution

shareholder who is or was the trustee under the trust or a counterparty to the contract if any assets, rights or liabilities that are or were the subject of the trust or contract are affected by a property transfer instrument.

(11) A transfer of an interest in land under a property transfer instrument does not extinguish, affect, vary, diminish or postpone any priority of that interest, whether under the Land Registration Ordinance (Cap. 128), at law or in equity.

(12) The resolution authority must register or cause to be registered in the Land Registry—

(a) a copy of the property transfer instrument under which an interest in land is transferred;

(b) a copy of an instrument that states whether any condition imposed on the transfer under subsection (4) is satisfied; and

(c) a copy of an instrument that evidences an automatic vesting in the original transferor in consequence of a breach of such condition.

(13) The production of the instruments mentioned in subsection (12)(a) and (b) is conclusive evidence for proving and deducing title in favour of the transferee. However, in the case of an automatic vesting in the original transferor, the production of the instruments mentioned in subsection (12)(a), (b) and (c) is conclusive evidence for proving and deducing title in favour of the original transferor.

(14) The vesting of an interest in land under a property transfer instrument does not—

(a) constitute an acquisition, disposal, assignment, transfer or parting with possession of that interest for the purposes of section 53(4)(a) or (7)(a) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7);

(b) constitute an assignment or underlease of, or an agreement to assign or underlet, that interest for the purposes of section 6(1)(b) of the Landlord and Tenant (Consolidation) Ordinance (Cap. 7);

(c) constitute an assignment, transfer, devolution, parting with possession, dealing with or other disposition of that interest for the purposes of any provision contained in the Conveyancing and Property Ordinance (Cap. 219) or in any instrument concerning or affecting that interest;

(d) operate as a breach of covenant or condition against alienation;

(e) give rise to any forfeiture, damages or other right of action; or

(f) invalidate or discharge any contract or security interest.

(15) In this section—

restriction (限制) includes—

(a) any restriction, inability or incapacity affecting what can and cannot be assigned or transferred (whether generally or by a particular person); and

(b) a requirement for consent (however described);

transfer (轉讓) means a transfer of assets, rights or liabilities under a property transfer instrument.

5. Application to Court

(1) A resolution authority may, if of the opinion that a transferee has breached a condition of a transfer imposed under section 4(4) of this Schedule, apply to the Court for an order under subsection (2).

(2) On an application under subsection (1), the Court may, if satisfied that the transferee has breached a condition mentioned in that subsection, make any order that it thinks fit, including an order that the transferee effects a transfer back to the original transferor.

6. Transferable property

A property transfer instrument may transfer any assets, rights or liabilities of a prescribed entity including, in particular—

(a) assets, rights or liabilities acquired or arising between the making of the instrument and the transfer date;

(b) rights or liabilities arising on or after the transfer date in respect of matters occurring before that date;

(c) assets outside Hong Kong;

(d) rights or liabilities under a non-Hong Kong law; and

(e) rights or liabilities arising under an Ordinance to which the prescribed entity is entitled or subject.

7. Continuity

(1) A property transfer instrument may provide—

(a) for a transfer to be, or to be treated as, a succession; and

(b) for a transferee to be treated for any purpose connected with the transfer as the same person as the transferor.

(2) A property transfer instrument may provide for agreements made or other things done by, or in relation to, a transferor to be treated as made or done by, or in relation to, the transferee.

(3) A property transfer instrument may provide for anything (including legal proceedings) that relates to anything transferred and is in the process of being done by, or in relation to, the transferor immediately before the transfer date to be continued by, or in relation to, the transferee.

(4) A property transfer instrument that transfers, or enables the transfer of, a contract of employment may include provision about continuity of employment.

(5) A property transfer instrument may modify references (express or implied) to a transferor in an instrument or other document.

(6) In so far as rights and liabilities in respect of anything transferred are enforceable after the transfer, a property transfer instrument may provide for apportionment between the transferor and the transferee to a specified extent and in specified ways.

(7) A property transfer instrument may enable the transferor and transferee by agreement to modify a provision of the instrument, but a modification—

(a) must achieve a result that could have been achieved by the instrument; and

(b) may not transfer (or arrange for the transfer of) assets, rights or liabilities.

(8) A property transfer instrument may permit or require—

(a) a transferor to provide a transferee with information and assistance; and

(b) a transferee to provide a transferor with information and assistance.

8. Delisting

A property transfer instrument may provide for the listing of securities on a recognized stock market to be cancelled or dealings in securities on a recognized stock market to be suspended.

9. Removal of directors etc.

(1) A property transfer instrument may revoke the appointment of a person as a director, or as the chief executive officer or deputy chief executive officer, of a prescribed entity with effect from a date, or the occurrence of an event, specified in the instrument.

(2) The exercise of a power under subsection (1) does not affect the rights of any party to a contract of employment or services under which a director, chief executive officer or deputy chief executive officer is employed by, or acts for or on behalf of or under an arrangement with, a prescribed entity.

10. Licences

(1) A licence in respect of anything transferred by a property transfer instrument continues to have effect despite the transfer.

(2) A property transfer instrument may disapply subsection (1) to a specified extent.

(3) If a licence confers rights or imposes obligations, a property transfer instrument may apportion responsibility for the exercise of, or compliance with, those rights or obligations between the transferor and the transferee.

(4) In this section—

licence (牌照) includes permission and approval and any other permissive document in respect of anything transferred.

11. Creation of liabilities

(1) The provision that may be made by a property transfer instrument includes provision for the creation of liabilities.

(2) The provision may be framed by reference to an agreement that has been or is to be entered into, or anything else that has been or is to be done, by any person.

12. Protected deposits

(1) This section applies if a property transfer instrument transfers a loan of money that is a protected deposit and both the transferor and transferee are Scheme members.

(2) Any protected deposit held by a depositor with the transferee immediately before the transfer date continues to be a protected deposit.

(3) A protected deposit mentioned in subsection (2) is not affected by any increase in the number or amount of deposits held by the depositor with the transferee caused by the property transfer instrument.

(4) Any protected deposit held by a depositor with the transferor immediately before the transfer date that is transferred by the property transfer instrument (***transferred protected deposit***) continues to be a protected deposit for the period of 6 months beginning on the transfer date, even if it matures on or after the transfer date and is renewed with the transferee.

(5) However, if the transferred protected deposit has an original maturity date that is after the expiry of the period of 6 months beginning on the transfer date, it continues to be a protected deposit until it first matures after the transfer date.

(6) Subsections (4) and (5) have effect despite the number or amount of deposits held by the depositor with the transferee immediately before the transfer date.

(7) Subsection (8) applies if the transferee becomes a failed Scheme member within 6 months beginning on the transfer date.

(8) Section 27(1) and (2) of the Deposit Protection Scheme Ordinance (Cap. 581) has effect in relation to a depositor with the transferee as if for any reference in that section to the dollar amount that is the maximum total amount of compensation, there were substituted a reference to the dollar amount that is equal to the increased maximum amount.

(9) This section has effect despite anything to the contrary in the Deposit Protection Scheme Ordinance (Cap. 581).

(10) In this section—

failed Scheme member (無力償付成員) has the meaning given by section 2(1) of the Deposit Protection Scheme Ordinance (Cap. 581);

increased maximum amount (經增加款額上限), in relation to a depositor with the transferee, means an amount equal to the sum of—

(a) the dollar amount specified in section 27(1) and (2) of the Deposit Protection Scheme Ordinance (Cap. 581); and

(b) the lesser of the following—

(i) the amount of the transferred protected deposit plus the amount of any interest accrued on it up to and including the transfer date;

(ii) the dollar amount specified in section 27(1) and (2) of the Deposit Protection Scheme Ordinance (Cap. 581).

13. Non-Hong Kong property

(1) This section applies if a property transfer instrument transfers non-Hong Kong property.

(2) The transferor and the transferee must each take any necessary steps to ensure that the transfer is effective as a matter of non-Hong Kong law (if it is not otherwise so effective).

(3) Until the transfer is effective as a matter of non-Hong Kong law, the transferor must—

(a) hold the asset or right for the benefit of the transferee (together with any additional asset or right accruing by operation of the original asset or right); or

(b) discharge the liability on behalf of the transferee.

(4) If a resolution authority determines that, despite any steps taken by the transferee or the transferor, it is not possible for the transfer of certain non-Hong Kong property to be effective under the law of the jurisdiction where the property is located or (if the property consists of rights or liabilities) the law under which it arises—

(a) subsection (3) ceases to apply; and

(b) the provisions of the property transfer instrument relating to that property are void.

(5) The resolution authority must give written notice of any determination under subsection (4) to the transferor and the transferee.

(6) The transferor must meet any expenses of the transferee in complying with this section.

(7) The transferor must comply with any directions of the resolution authority in respect of the obligations under subsections (2) and (3).

(8) A direction under subsection (7) may disapply subsection (2) or (3) to a specified extent.

(9) An obligation imposed by or under this section is enforceable as if created by contract between the transferor and transferee.

14. Incidental provision etc.

(1) A property transfer instrument may include incidental, consequential or transitional provisions.

(2) In relying on subsection (1), a property transfer instrument—

(a) may make provision generally or only for specified purposes, cases or circumstances; and

(b) may make different provision for different purposes, cases or circumstances.

Part 2

Supplemental Property Transfer Instrument

15. Supplemental property transfer instrument

(1) This Part applies if a resolution authority has made a property transfer instrument under Part 5 (***original instrument***).

(2) The resolution authority may make one or more supplemental property transfer instruments.

(3) A supplemental property transfer instrument is a property transfer instrument that—

(a) provides for assets, rights or liabilities to be transferred from the transferor under the original instrument (whether accruing or arising before or after the original instrument); or

(b) makes provision of a kind that a property transfer instrument may make under section 2(1)(b) of this Schedule (whether or not in connection with a transfer that was the subject of the original instrument).

(4) The possibility of making a supplemental property transfer instrument in reliance on subsection (2) does not prevent the making of a new instrument under Part 5 (and not in reliance on subsection (2)).

(5) Section 25 does not apply to the making of a supplemental property transfer instrument.

(6) Except as otherwise provided by this Part, Part 1 of this Schedule applies with respect to a supplemental property transfer instrument in the same way as it applies with respect to an original instrument.

Part 3

Reverse Property Transfer Instrument

16. Reverse property transfer instrument

(1) This Part applies if a resolution authority has made a property transfer instrument under Part 5 (***original instrument***) providing for the transfer of assets, rights or liabilities of a prescribed entity (***original transferred assets, rights or liabilities***) to another entity (***original transferee***).

(2) The resolution authority may make one or more reverse property transfer instruments in respect of original transferred assets, rights or liabilities held by the original transferee.

(3) A reverse property transfer instrument is a property transfer instrument that—

(a) provides for the transfer of original transferred assets, rights or liabilities held by the original transferee to the transferor under the original instrument; and

(b) makes any other provision for the purpose of, or in connection with, the transfer of original transferred assets, rights or liabilities (whether or not the transfer was the subject of that instrument).

(4) A resolution authority must not make a reverse property transfer instrument without the written consent of the original transferee unless the original transferee is a bridge institution, an asset management vehicle or a TPO company.

(5) Nothing in this section prevents the making of a supplemental property transfer instrument under Part 2 of this Schedule in respect of assets, rights or liabilities that have been the subject of a reverse property transfer instrument.

(6) Section 25 does not apply to the making of a reverse property transfer instrument.

(7) Except as otherwise provided by this Part, Part 1 of this Schedule applies with respect to a reverse property transfer instrument in the same way as it applies with respect to an original instrument.

Schedule 5

[ss. 58 & 203]

Excluded Liabilities

1. Interpretation

In this Schedule—

clearing participant (結算所參與者) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

collateral arrangements (抵押安排) includes arrangements under which an entity in respect of which a bail-in instrument is made transfers assets to another entity on terms providing for the transferee to transfer the assets if specified obligations are discharged;

deposit-taking company (接受存款公司) has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155);

employee (僱員) includes the holder of an office;

occupational pension scheme (職業退休計劃) means any arrangement for the payment of pensions, allowances, gratuities or other benefits and includes—

(a) an occupational retirement scheme as defined by section 2 of the Occupational Retirement Schemes Ordinance (Cap. 426); and

(b) a provident fund scheme as defined by section 2 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);

restricted licence bank (有限制牌照銀行) has the meaning given by section 2(1) of the Banking Ordinance (Cap. 155);

secured (獲保證) means secured against assets or rights of an entity in respect of which a bail-in instrument is made, or otherwise covered by collateral arrangements.

2. Excluded liabilities

The following liabilities of a within scope financial institution are the excluded liabilities mentioned in section 58(4)—

(a) liabilities of a note-issuing bank as defined by section 2 of the Legal Tender Notes Issue Ordinance (Cap. 65) in respect of legal tender notes as defined by section 2 of that Ordinance;

(b) liabilities representing protected deposits;

(c) liabilities representing deposits made with a deposit-taking company or a restricted licence bank that would be protected deposits if the deposit-taking company or the restricted licence bank were a Scheme member;

(d) liabilities owed to the Hong Kong Deposit Protection Board established by section 3 of the Deposit Protection Scheme Ordinance (Cap. 581);

(e) for a financial institution that is exempt from section 12(1) of the Deposit Protection Scheme Ordinance (Cap. 581), liabilities owed in respect of a deposit protection scheme, or other scheme of a similar nature, that protects deposits taken by it at its Hong Kong offices;

(f) liabilities representing the level of claims under a policy as defined by regulation 2 of the Motor Vehicles Insurance (Third Party Risks) Regulations (Cap. 272 sub. leg. A) that are protected by the

Insolvency Fund administered by the Motor Insurers' Bureau of Hong Kong;

(g) liabilities owed to the Motor Insurers' Bureau of Hong Kong;

(h) liabilities representing the level of claims under a policy of insurance issued for the purposes of this Part as defined by section 38 of the Employees' Compensation Ordinance (Cap. 282) that are protected by the Employees Compensation Insurer Insolvency Scheme administered by the Employees Compensation Insurer Insolvency Bureau;

(i) liabilities owed to the Employees Compensation Insurer Insolvency Bureau;

(j) liabilities owed by an insurer to any scheme established by or under an Ordinance that is designed to secure compensation to persons in circumstances in which the insurer becomes insolvent;

(k) liabilities owed under a policy of insurance in respect of any claim for compensation under any scheme established by or under an Ordinance that is designed to secure compensation to persons in circumstances in which the insurer becomes insolvent;

(l) any liability, so far as it is secured;

(m) liabilities arising because of holding client assets;

(n) liabilities owed to an employee or former employee in relation to wages or any of the following under the Employment Ordinance (Cap. 57)—

(i) annual leave pay;

(ii) end of year payment;

(iii) holiday pay;

(iv) long service payment;

(v) maternity leave pay;

(vi) paternity leave pay;

(vii) payment in lieu of notice;

(viii) severance payment;

(ix) sickness allowance;

(x) terminal payment;

(o) liabilities owed in relation to an occupational pension scheme in respect of an employee or former employee, except for liabilities owed in relation to a right arising out of the exercise of a discretion;

(p) liabilities owed to a creditor, other than a group company of the financial institution, arising from the provision of goods or services (other than financial services) that are critical to the daily functioning of the financial institution's operations;

(q) unsecured short-term inter-bank liabilities, with an original maturity of less than 7 days, owed to an entity other than a group company of the financial institution;

(r) liabilities arising from participation in designated clearing and settlement systems and owed to such systems or to the operators of, or participants in, such systems;

(s) liabilities arising from participation in the services provided by a recognized clearing house and owed to the clearing house or to its clearing participants;

(t) liabilities owed under an Ordinance to the Government that in a winding up would be discharged in priority to all other liabilities in accordance with section 265 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).

Schedule 6

[ss. 2, 32, 58 & 64]

Bail-in Instruments

Part 1

General

1. Interpretation

In this Schedule—

prescribed entity (訂明實體) means—

(a) a within scope financial institution;

(b) a holding company of a within scope financial institution; or

(c) an affiliated operational entity of a within scope financial institution.

2. Procedure

As soon as practicable after making a bail-in instrument in respect of a prescribed entity, the resolution authority must—

(a) send a copy to—

(i) the prescribed entity;

(ii) any person to whom securities are transferred by the instrument; and

(iii) the Financial Secretary;

(b) publish a copy of the instrument on its internet website;

(c) arrange for the publication of a copy of the instrument on the internet website (if any) of the prescribed entity; and

(d) cause notice of the making of the instrument to be published—

(i) in the Gazette; and

(ii) in 2 newspapers (one being an English language newspaper and the other being a Chinese language newspaper) chosen by the resolution authority to maximize the likelihood of the notice coming to the attention of persons likely to be affected.

3. Effect of bail-in instrument

(1) A provision made in a bail-in instrument takes effect at the time, or on the date, specified in the bail-in instrument.

(2) Provision made in a bail-in instrument takes effect despite any restriction arising under contract or legislation or in any other way.

(3) A bail-in instrument may provide for a transfer to take effect freed from any trust, liability or other encumbrance (and may include provision about the extinguishment of any trust, liability or other encumbrance).

(4) A bail-in instrument may extinguish rights to acquire securities.

(5) This section does not affect the right of a person to make, as a beneficiary under a trust or a party to a contract, a claim against a pre-resolution creditor or pre-resolution shareholder who is or was the trustee under the trust or a counterparty to the contract if any assets, rights or liabilities that are or were the subject of the trust or contract are affected by a bail-in instrument.

(6) In this section—

restriction (限制) includes—

(a) any restriction, inability or incapacity affecting what can or cannot be assigned or transferred (whether generally or by a particular person); and

(b) a requirement for consent (however described);

transfer (轉讓) means a transfer of securities under a bail-in instrument.

4. Continuity

(1) A bail-in instrument may provide for anything (including legal proceedings) that relates to anything affected by the instrument and is in the process of being done immediately before the instrument takes effect to be continued from the time the instrument takes effect.

(2) A bail-in instrument may modify references (express or implied) in an instrument or other document.

(3) A bail-in instrument may permit or require any person to provide information and assistance to the resolution authority or another person, for the purpose of, or in connection with, any provision made, or to be made, in that or another bail-in instrument.

5. Delisting

A bail-in instrument may provide for the listing of securities on a recognized stock market to be cancelled or dealings in securities on a recognized stock market to be suspended.

6. Removal of directors etc.

(1) A bail-in instrument may revoke the appointment of a person as a director, or as the chief executive officer or deputy chief executive officer, of a prescribed entity with effect from a date, or the occurrence of an event, specified in the instrument.

(2) The exercise of a power under subsection (1) does not affect the rights of any party to a contract of employment or services under which a director, chief executive officer or deputy chief executive officer is employed by, or acts for or on behalf of or under an arrangement with, a prescribed entity.

7. Instruments

(1) A bail-in instrument may permit or require the execution, issue or delivery of an instrument.

(2) A bail-in instrument may provide for any provision in the instrument to have effect irrespective of—

(a) whether an instrument has been produced, delivered, transferred or otherwise dealt with; or

(b) registration.

(3) A bail-in instrument may provide for the effect of an instrument executed, issued or delivered in accordance with the bail-in instrument.

(4) A bail-in instrument may—

(a) entitle a person to be registered in respect of a security; and

(b) for that purpose, require a person to effect registration.

8. Incidental provision etc.

(1) A bail-in instrument may include incidental, consequential or transitional provisions.

(2) In relying on subsection (1), a bail-in instrument—

(a) may make provision generally or only for specified purposes, cases or circumstances; and

(b) may make different provision for different purposes, cases or circumstances.

Part 2

Supplemental Bail-in Instrument

9. Supplemental bail-in instrument

(1) This Part applies if a resolution authority has made a bail-in instrument under Part 5 (***original instrument***).

(2) The resolution authority may make one or more supplemental bail-in instruments.

(3) A supplemental bail-in instrument may make provision of any kind that could have been made by the original instrument.

(4) The possibility of making a supplemental bail-in instrument in reliance on subsection (2) does not prevent the making of a new instrument under Part 5 (and not in reliance on subsection (2)).

(5) Section 25 does not apply to the making of a supplemental bail-in instrument.

(6) Except as otherwise provided by this Part, Part 1 of this Schedule applies with respect to a supplemental bail-in instrument in the same way as it applies with respect to an original instrument.

Schedule 7

[ss. 94 & 105]

Valuation Assumptions and Principles

1. In assessing the value of the winding up treatment in relation to an affected entity for the purposes of Part 6, the following assumptions are to be made and principles applied—

   (a) an assessment is to be made as if any stabilization option applied to the entity had not been applied and as if no other stabilization option would be applied to the entity;

   (b) it is to be assumed that any assets of the entity available on a winding up of the entity would have been distributed on the winding up to creditors in accordance with the priorities established by section 265 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

   (c) an assessment is to be made as if any financial support or assistance provided, directly or indirectly, to the entity by the Government, a public body or a public officer, other than in the ordinary course of business, was not provided;

   (d) the possibility of any support or assistance mentioned in paragraph (c) is to be disregarded.

Schedule 8

[ss. 110, 112,
113 & 122]

Resolvability Review Tribunal

1. Interpretation

In this Schedule—

chairperson (主席) means the chairperson of the Tribunal;

ordinary member (普通成員) means a member of the Tribunal, other than the chairperson;

panel member (審裁團成員) means a member of the Tribunal panel;

Tribunal (審裁處) means the Resolvability Review Tribunal;

Tribunal panel (審裁團) means the panel of persons appointed under section 3 of this Schedule.

2. Appointment of chairperson

(1) The Chief Executive must, on the recommendation of the Chief Justice, by notice published in the Gazette, appoint as the chairperson of the Tribunal a person who—

(a) is—

(i) a former Justice of Appeal of the Court of Appeal;

(ii) a former judge, a former recorder or a former deputy judge of the Court; or

(iii) eligible for appointment as a judge of the High Court under section 9 of the High Court Ordinance (Cap. 4);

(b) either—

(i) is not a public officer; or

(ii) is a public officer only because of being the chairperson or other member of a board or tribunal established under an Ordinance;

(c) is not the Monetary Authority or a person appointed to assist the Monetary Authority under section 5A(3) of the Exchange Fund Ordinance (Cap. 66);

(d) is not a member of, or employed by, the Securities and Futures Commission; and

(e) is not the Insurance Authority or employed by the Insurance Authority.

(2) Subject to subsections (3) and (5), the chairperson is appointed for the period, not exceeding 5 years, that the Chief Executive considers appropriate and may be reappointed from time to time.

(3) The chairperson may at any time resign from office by giving written notice of resignation to the Chief Executive.

(4) A notice under subsection (3) takes effect on the date specified in it for it to take effect or, if no date is so specified, on the date of its receipt by the Chief Executive.

(5) The Chief Executive may, after consultation with the Chief Justice, by notice published in the Gazette, revoke the appointment of a person as chairperson if satisfied that the person is unable or unfit to perform the duties and exercise the powers of the chairperson because of physical or mental illness or any other reason.

3. Appointment of Tribunal panel

(1) The Chief Executive must appoint qualified persons to a panel comprising such number of members as the Chief Executive considers appropriate.

(2) A person is qualified for appointment as a panel member if the person—

(a) in the opinion of the Chief Executive—

(i) has relevant expertise;

(ii) has practical experience in the financial services sector; and

(iii) understands the regime established by this Ordinance for the orderly resolution of financial institutions;

(b) either—

(i) is not a public officer; or

(ii) is a public officer only because of being the chairperson or other member of a board or tribunal established under an Ordinance;

(c) is not the Monetary Authority or a person appointed to assist the Monetary Authority under section 5A(3) of the Exchange Fund Ordinance (Cap. 66);

(d) is not a member of, or employed by, the Securities and Futures Commission; and

(e) is not the Insurance Authority or employed by the Insurance Authority.

(3) Subject to subsections (4) and (6), a panel member is appointed for the period, not exceeding 5 years, that the Chief Executive considers appropriate and may be reappointed from time to time.

(4) A panel member may at any time resign from office by giving written notice of resignation to the Chief Executive.

(5) A notice under subsection (4) takes effect on the date specified in it for it to take effect or, if no date is so specified, on the date of its receipt by the Chief Executive.

(6) The Chief Executive may, by notice published in the Gazette, revoke the appointment of a person as panel member if satisfied that the person is unable or unfit to perform the duties and exercise the powers of a panel member because of physical or mental illness or any other reason.

4. Appointment of ordinary members

(1) For determining a proceeding, the Financial Secretary must, on the recommendation of the chairperson, appoint 2 panel members as ordinary members in relation to the proceeding.

(2) An ordinary member may at any time resign from office by giving written notice of resignation to the Financial Secretary.

(3) A notice under subsection (2) takes effect on the date specified in it for it to take effect or, if no date is so specified, on the date of its receipt by the Financial Secretary.

(4) An ordinary member ceases to be an ordinary member on ceasing to be a panel member.

5. Further provisions relating to chairperson and members

(1) The chairperson or an ordinary member is entitled to be paid, as a fee for services, such amount as the Financial Secretary considers appropriate.

(2) An amount payable under subsection (1) is a charge on the general revenue.

6. Acting appointments

(1) Subsection (2) applies if the chairperson is prevented by illness, absence from Hong Kong or any other cause from performing the functions of chairperson.

(2) The Chief Justice may appoint a person who is qualified for appointment as chairperson under section 2(1) of this Schedule to act as chairperson, and perform all the functions of chairperson (including as sole member of the Tribunal under section 10 of this Schedule), for the period during which the chairperson is prevented from performing those functions.

(3) Subsection (4) applies if an ordinary member is prevented by illness, absence from Hong Kong or any other cause from taking part in proceedings of the Tribunal.

(4) The Financial Secretary may appoint another Tribunal panel member to act as ordinary member, and take part in the proceedings of the Tribunal, for the period during which the ordinary member is prevented from so taking part.

(5) If at the expiry of the term of appointment of the chairperson or an acting chairperson or a member or an acting member, the hearing of a proceeding has commenced but the proceeding has not been completed, that person may continue to act as chairperson or member (as the case requires) for completing the proceeding.

(6) If during the hearing of a proceeding, there is a change in the person who is, or is acting as, chairperson or in the persons who are, or are acting as, members, then—

(a) if the parties to the proceeding so consent, the hearings may continue despite that change; or

(b) in the absence of such consent, the hearings must not continue but may begin over again.

7. Procedure

(1) The chairperson must convene the sittings of the Tribunal that are necessary to determine a proceeding.

(2) The chairperson may, at any time after an application has been made, give directions to the parties to the proceeding concerning—

(a) procedural matters to be complied with by the parties; and

(b) the time within which the parties are required to comply with those matters.

(3) Subject to section 10 of this Schedule, at any sitting of the Tribunal—

(a) the chairperson and 2 ordinary members must be present;

(b) the chairperson must preside;

(c) the order of proceedings must be determined by the Tribunal in the manner most appropriate to the circumstances of the case;

(d) every question before the Tribunal (other than a question of law) must be determined by the majority of the votes cast by the chairperson and the ordinary members; and

(e) a question of law before the Tribunal must be determined by the chairperson alone.

(4) The right to be heard conferred by section 18(2) may be exercised in person or—

(a) for a corporation, through an officer or employee of the corporation;

(b) for the Monetary Authority, through a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66) to assist the Monetary Authority;

(c) for the Securities and Futures Commission or the Insurance Authority, through an officer or employee of the Commission or the Authority;

(d) in any case, through counsel or a solicitor or, with the leave of the Tribunal, through any other person.

(5) The chairperson must prepare, or cause to be prepared, a record of the proceedings at any sitting of the Tribunal containing the particulars relating to the proceedings that the chairperson considers appropriate.

8. Preliminary conferences

(1) At any time after an application has been made, the chairperson may direct that a conference, to be attended by the parties or their representatives and presided over by the chairperson, must be held for—

(a) enabling the parties to prepare for the conduct of the proceeding;

(b) assisting the Tribunal to determine issues for the purpose of the proceeding; and

(c) generally securing the just, expeditious and economical conduct of the proceeding.

(2) The chairperson may give a direction under subsection (1) on his or her own initiative or on the application of any of the parties to the proceeding if—

(a) the chairperson considers it appropriate to do so after considering any material submitted in relation to the proceeding by the parties to it; or

(b) the parties agree or, for an application made by a party under this subsection, each other party agrees.

(3) At a conference held in accordance with a direction under subsection (1), the chairperson—

(a) may give any direction the chairperson considers necessary or desirable for securing the just, expeditious and economical conduct of the proceeding; and

(b) must endeavour to ensure that the parties to the proceeding make all agreements that they ought to make in relation to the proceeding.

(4) After a conference is held, the chairperson must report to the Tribunal on the matters relating to it that the chairperson considers appropriate.

9. Consent orders

(1) At any time after an application has been made, the Tribunal or chairperson may make any order that the Tribunal or chairperson is entitled to make under any provision of this Ordinance if—

(a) the parties to the proceeding request, and agree to, the making of the order; and

(b) the parties consent to all of the terms of the order.

(2) An order mentioned in subsection (1) may be made whether or not the requirements otherwise applicable to its making have been complied with.

(3) An order made under subsection (1) must, for all purposes, be regarded as an order made under the provision in question in compliance with the requirements otherwise applicable to the making of the order.

(4) In this section—

order (命令) includes any finding, determination and any other decision.

10. Chairperson as sole member of Tribunal

(1) The chairperson may determine a proceeding as the sole member of the Tribunal in the circumstances mentioned in subsection (2).

(2) The circumstances are that, at any time after an application has been made but before any sitting of the Tribunal is held to determine the proceeding, the parties to the proceeding, by written notice given to the Tribunal, inform it that they have agreed that the proceeding may be determined by the chairperson as the sole member of the Tribunal.

(3) The chairperson may determine as the sole member of the Tribunal—

(a) an application under section 17(4) for an extension of the time within which a review application may be made; or

(b) an application under section 120 for a stay of execution of a determination or order of the Tribunal.

(4) If subsection (1) or (3) applies, the Tribunal constituted by the chairperson as the sole member of the Tribunal is, for all purposes, to be regarded as the Tribunal constituted also by 2 ordinary members.

(5) In the circumstances specified in subsection (6), a person who is eligible to be appointed as a chairperson under section 2(1) of this Schedule must, on appointment by the Chief Justice for the purpose, determine the application in question as if he or she were the chairperson duly

appointed under this Ordinance, and the provisions of this Ordinance apply to him or her accordingly.

(6) The circumstances are—

(a) there is an application mentioned in subsection (3); and

(b) the chairperson—

(i) cannot perform his or her functions because of illness, absence from Hong Kong or any other reason; or

(ii) considers it improper or undesirable that he or she should perform his or her functions in relation to the application.

11. Privileges and immunities

Except as otherwise provided in this Ordinance, the following have the same privileges and immunities in respect of a proceeding before the Tribunal as they would have if the proceeding were civil proceedings before the Court—

(a) the Tribunal, the chairperson and ordinary members; and

(b) the parties to, and any witness, counsel, solicitor or other person involved in, the proceeding.

Schedule 9

[ss. 127, 129,
130 & 140]

Resolution Compensation Tribunal

1. Interpretation

In this Schedule—

chairperson (主席) means the chairperson of the Tribunal;

ordinary member (普通成員) means a member of the Tribunal, other than the chairperson;

panel member (審裁團成員) means a member of the Tribunal panel;

Tribunal (審裁處) means the Resolution Compensation Tribunal;

Tribunal panel (審裁團) means the panel of persons appointed under section 3 of this Schedule.

2. Appointment of chairperson

(1) The Chief Executive must, on the recommendation of the Chief Justice, by notice published in the Gazette, appoint as the chairperson of the Tribunal a person who—

(a) is—

(i) a former Justice of Appeal of the Court of Appeal;

(ii) a former judge, a former recorder or a former deputy judge of the Court; or

(iii) eligible for appointment as a judge of the High Court under section 9 of the High Court Ordinance (Cap. 4);

(b) either—

(i) is not a public officer; or

(ii) is a public officer only because of being the chairperson or other member of a board or tribunal established under an Ordinance;

(c) is not the Monetary Authority or a person appointed to assist the Monetary Authority under section 5A(3) of the Exchange Fund Ordinance (Cap. 66);

(d) is not a member of, or employed by, the Securities and Futures Commission; and

(e) is not the Insurance Authority or employed by the Insurance Authority.

(2) Subject to subsections (3) and (5), the chairperson is appointed for the period, not exceeding 5 years, that the Chief Executive considers appropriate and may be reappointed from time to time.

(3) The chairperson may at any time resign from office by giving written notice of resignation to the Chief Executive.

(4) A notice under subsection (3) takes effect on the date specified in it for it to take effect or, if no date is so specified, on the date of its receipt by the Chief Executive.

(5) The Chief Executive may, after consultation with the Chief Justice, by notice published in the Gazette, revoke the appointment of a person as chairperson if satisfied that the person is unable or unfit to perform the duties and exercise the powers of the chairperson because of physical or mental illness or any other reason.

3. Appointment of Tribunal panel

(1) The Chief Executive must appoint qualified persons to a panel comprising such number of members as the Chief Executive considers appropriate.

(2) A person is qualified for appointment as a panel member if the person—

(a) in the opinion of the Chief Executive—

(i) has relevant expertise;

(ii) has relevant practical experience in valuation; and

(iii) understands the regime established by this Ordinance for the orderly resolution of financial institutions;

(b) either—

(i) is not a public officer; or

(ii) is a public officer only because of being the chairperson or other member of a board or tribunal established under an Ordinance;

(c) is not the Monetary Authority or a person appointed to assist the Monetary Authority under section 5A(3) of the Exchange Fund Ordinance (Cap. 66);

(d) is not a member of, or employed by, the Securities and Futures Commission; and

(e) is not the Insurance Authority or employed by the Insurance Authority.

(3) Subject to subsections (4) and (6), a panel member is appointed for the period, not exceeding 5 years, that the Chief Executive considers appropriate and may be reappointed from time to time.

(4) A panel member may at any time resign from office by giving written notice of resignation to the Chief Executive.

(5) A notice under subsection (4) takes effect on the date specified in it for it to take effect or, if no date is so specified, on the date of its receipt by the Chief Executive.

(6) The Chief Executive may, by notice published in the Gazette, revoke the appointment of a person as panel member if satisfied that the person is unable or unfit to perform the duties and exercise the powers of a panel member because of physical or mental illness or any other reason.

4. Appointment of ordinary members

(1) For determining a proceeding, the Financial Secretary must, on the recommendation of the chairperson, appoint 2 panel members as ordinary members in relation to the proceeding.

(2) An ordinary member may at any time resign from office by giving written notice of resignation to the Financial Secretary.

(3) A notice under subsection (2) takes effect on the date specified in it for it to take effect or, if no date is so specified, on the date of its receipt by the Financial Secretary.

(4) An ordinary member ceases to be an ordinary member on ceasing to be a panel member.

5. Further provisions relating to chairperson and members

(1) The chairperson or an ordinary member is entitled to be paid, as a fee for services, such amount as the Financial Secretary considers appropriate.

(2) An amount payable under subsection (1) is a charge on the general revenue.

6. Acting appointments

(1) Subsection (2) applies if the chairperson is prevented by illness, absence from Hong Kong or any other cause from performing the functions of chairperson.

(2) The Chief Justice may appoint a person who is qualified for appointment as chairperson under section 2(1) of this Schedule to act as chairperson, and perform all the functions of chairperson (including as sole member of the Tribunal under section 10 of this Schedule), for the period during which the chairperson is prevented from performing those functions.

(3) Subsection (4) applies if an ordinary member is prevented by illness, absence from Hong Kong or any other cause from taking part in proceedings of the Tribunal.

(4) The Financial Secretary may appoint another Tribunal panel member to act as ordinary member, and take part in the proceedings of the Tribunal, for the period during which the ordinary member is prevented from so taking part.

(5) If at the expiry of the term of appointment of the chairperson or an acting chairperson or a member or an acting member, the hearing of a proceeding has commenced but the proceeding has not been completed, that person may continue to act as chairperson or member (as the case requires) for completing the proceeding.

(6) If during the hearing of a proceeding, there is a change in the person who is, or is acting as, chairperson or in the persons who are, or are acting as, members, then—

(a) if the parties to the proceeding so consent, the hearings may continue despite that change; or

(b) in the absence of such consent, the hearings must not continue but may begin over again.

7. Procedure

(1) The chairperson must convene the sittings of the Tribunal that are necessary to determine a proceeding.

(2) The chairperson may, at any time after an application has been made, give directions to the parties to the proceeding concerning—

(a) procedural matters to be complied with by the parties; and

(b) the time within which the parties are required to comply with those matters.

(3) Subject to section 10 of this Schedule, at any sitting of the Tribunal—

(a) the chairperson and 2 ordinary members must be present;

(b) the chairperson must preside;

(c) the order of proceedings must be determined by the Tribunal in the manner most appropriate to the circumstances of the case;

(d) every question before the Tribunal (other than a question of law) must be determined by the majority of the votes cast by the chairperson and the ordinary members; and

(e) a question of law before the Tribunal must be determined by the chairperson alone.

(4) The right to be heard conferred by section 98(4) or 108(3) may be exercised in person or—

(a) for a corporation, through an officer or employee of the corporation;

(b) for the Monetary Authority, through a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66) to assist the Monetary Authority;

(c) for the Securities and Futures Commission or the Insurance Authority, through an officer or employee of the Commission or the Authority;

(d) in any case, through counsel or a solicitor or, with the leave of the Tribunal, through any other person.

(5) The chairperson must prepare, or cause to be prepared, a record of the proceedings at any sitting of the Tribunal containing the particulars relating to the proceedings that the chairperson considers appropriate.

8. Preliminary conferences

(1) At any time after an application has been made, the chairperson may direct that a conference, to be attended by the parties or their representatives and presided over by the chairperson, must be held for—

(a) enabling the parties to prepare for the conduct of the proceeding;

(b) assisting the Tribunal to determine issues for the purpose of the proceeding; and

(c) generally securing the just, expeditious and economical conduct of the proceeding.

(2) The chairperson may give a direction under subsection (1) on his or her own initiative or on the application of any of the parties to the proceeding if—

(a) the chairperson considers it appropriate to do so after considering any material submitted in relation to the proceeding by the parties to it; or

(b) the parties agree or, for an application made by a party under this subsection, each other party agrees.

(3) At a conference held in accordance with a direction under subsection (1), the chairperson—

(a) may give any direction the chairperson considers necessary or desirable for securing the just, expeditious and economical conduct of the proceeding; and

(b) must endeavour to ensure that the parties to the proceeding make all agreements that they ought to make in relation to the proceeding.

(4) After a conference is held, the chairperson must report to the Tribunal on the matters relating to it that the chairperson considers appropriate.

9. Consent orders

(1) At any time after an application has been made, the Tribunal or chairperson may make any order that the Tribunal or chairperson is entitled to make under any provision of this Ordinance if—

(a) the parties to the proceeding request, and agree to, the making of the order; and

(b) the parties consent to all of the terms of the order.

(2) An order mentioned in subsection (1) may be made whether or not the requirements otherwise applicable to its making have been complied with.

(3) An order made under subsection (1) must, for all purposes, be regarded as an order made under the provision in question in compliance with the requirements otherwise applicable to the making of the order.

(4) In this section—

order (命令) includes any finding, determination and any other decision.

10. Chairperson as sole member of Tribunal

(1) The chairperson may determine a proceeding as the sole member of the Tribunal in the circumstances mentioned in subsection (2).

(2) The circumstances are that, at any time after an application has been made but before any sitting of the Tribunal is held to determine the proceeding, the parties to the proceeding, by written notice given to the Tribunal, inform it that they have agreed that the proceeding may be determined by the chairperson as the sole member of the Tribunal.

(3) The chairperson may determine as the sole member of the Tribunal—

(a) an application under section 107(4) for an extension of the time within which a review application may be made; or

(b) an application under section 138 for a stay of execution of a determination or order of the Tribunal.

(4) If subsection (1) or (3) applies, the Tribunal constituted by the chairperson as the sole member of the Tribunal is, for all purposes, to be regarded as the Tribunal constituted also by 2 ordinary members.

(5) In the circumstances specified in subsection (6), a person who is eligible to be appointed as a chairperson under section 2(1) of this Schedule must, on appointment by the Chief Justice for the purpose, determine the application in question as if he or she were the chairperson duly appointed under this Ordinance, and the provisions of this Ordinance apply to him or her accordingly.

(6) The circumstances are—

(a) there is an application mentioned in subsection (3); and

(b) the chairperson—

(i) cannot perform his or her functions because of illness, absence from Hong Kong or any other reason; or

(ii) considers it improper or undesirable that he or she should perform his or her functions in relation to the application.

11. Privileges and immunities

Except as otherwise provided in this Ordinance, the following have the same privileges and immunities in respect of a proceeding before the Tribunal as they would have if the proceeding were civil proceedings before the Court—

(a) the Tribunal, the chairperson and ordinary members; and

(b) the parties to, and any witness, counsel, solicitor or other person involved in, the proceeding.