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HONG KONG SPECIAL ADMINISTRATIVE REGION**ORDINANCE No. 7 OF 2004**

L.S.

TUNG Chee-hwa
Chief Executive
13 May 2004

An Ordinance to provide for the establishment of a Hong Kong Deposit Protection Board; to provide for the establishment by the Board of a Deposit Protection Scheme for the purpose of providing compensation to depositors under certain circumstances in respect of deposits maintained with banks that are members of the Scheme; to provide for the establishment of a Deposit Protection Scheme Fund from which such compensation is to be paid; to provide for contributions to the Fund and for the entitlement to, and payment of, compensation from the Fund; to make consequential and other amendments to other Ordinances; and to provide for connected purposes.

[]

Enacted by the Legislative Council.

PART 1**PRELIMINARY****1. Short title and commencement**

(1) This Ordinance may be cited as the Deposit Protection Scheme Ordinance.

(2) This Ordinance shall come 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, unless the context otherwise requires—

- “applicant” (申請人) means a person who applies to the Tribunal under section 41(1), (2) or (3) for a review of—
- (a) a decision, or an assessment, of the Board; or
 - (b) a decision of the Monetary Authority;
- “authorized institution” (認可機構) has the meaning assigned to it by section 2(1) of the Banking Ordinance (Cap. 155);
- “bank” (銀行) means a company—
- (a) that holds a valid banking licence; or
 - (b) the banking licence of which is for the time being suspended under section 24 or 25 of the Banking Ordinance (Cap. 155);
- “banking licence” (銀行牌照) means a banking licence granted under section 16 of the Banking Ordinance (Cap. 155);
- “bare trustee” (被動受託人), in relation to a deposit or portion thereof, means a person holding the deposit or that portion on trust for a beneficiary where the beneficiary has the exclusive right to direct how the deposit or that portion is to be dealt with subject only to the right of the person to resort to the deposit or that portion to satisfy any outstanding charge or lien or for the payment of duty, taxes, costs or other outgoings;
- “Board” (存保委員會) means the Hong Kong Deposit Protection Board established by section 3;
- “chief executive” (行政總裁), in relation to a Scheme member or a bank, means the chief executive appointed under section 74 of the Banking Ordinance (Cap. 155) in respect of the Scheme member or the bank, and includes an alternate chief executive so appointed;
- “client account” (客戶帳戶), in relation to a depositor, means an account maintained by the depositor with a bank for the purpose of holding money held by the depositor for a client of the depositor, whether or not other money may be held in the account;
- “contribution” (供款) means—
- (a) the build-up levy within the meaning of Schedule 4;
 - (b) the expected loss levy within the meaning of Schedule 4; or
 - (c) the surcharge within the meaning of Schedule 4;
- “deposit” (存款) has the meaning assigned to it by section 2(1) of the Banking Ordinance (Cap. 155);
- “depositor” (存款人) means a person entitled to repayment of a deposit, whether made by him or not;
- “director” (董事) includes any person who occupies the position of director, whatever the title of his office;
- “Exchange Fund” (外匯基金) means the Exchange Fund established by the Exchange Fund Ordinance (Cap. 66);
- “Exchange Fund Bill” (外匯基金票據) means any instrument described as such which is issued by the Government for the account of the Exchange Fund under the Exchange Fund Ordinance (Cap. 66);

- “failed Scheme member” (無力償付成員) means a Scheme member in relation to which a specified event has, for the purposes of Part 5, occurred;
- “function” (職能) includes a power and a duty;
- “Fund” (存保基金) means the Deposit Protection Scheme Fund established by section 14;
- “HKAB” (香港銀行公會) means The Hong Kong Association of Banks incorporated by section 3 of The Hong Kong Association of Banks Ordinance (Cap. 364);
- “holding company” (控股公司) means a holding company within the meaning of section 2 of the Companies Ordinance (Cap. 32);
- “information system” (資訊系統) has the meaning assigned to it by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);
- “late payment fee” (逾期繳付費) means the late payment fee imposed by the Board under section 15(4)(a);
- “liquidator” (清盤人) means a liquidator appointed by virtue of or under section 194 of the Companies Ordinance (Cap. 32);
- “MA supervisory rating” (專員監管評級), in relation to a Scheme member, means the supervisory rating that—
- (a) is from time to time assigned to the Scheme member by the Monetary Authority; and
 - (b) reflects the Monetary Authority’s assessment of the Scheme member’s overall financial condition and of the quality of the Scheme member’s management;
- “Monetary Authority” (金融管理專員) means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap. 66);
- “protected deposit” (受保障存款) means a deposit denominated in any currency and maintained with a Scheme member but does not include those specified in section 1 of Schedule 1;
- “provisional liquidator” (臨時清盤人) means a provisional liquidator appointed under section 193, or appointed by virtue of section 194, of the Companies Ordinance (Cap. 32);
- “related person” (有關連人士), in relation to the Board, means—
- (a) a person employed or authorized by the Board under this Ordinance; or
 - (b) a person appointed as an agent or adviser of the Board under this Ordinance;
- “relevant deposit” (有關存款) means a deposit denominated in any currency and maintained with a Scheme member but does not include those specified in section 2 of Schedule 1;
- “Scheme” (存保計劃) means the Deposit Protection Scheme established under section 11;
- “Scheme member” (計劃成員) means a bank that is a member of the Scheme;

“subsidiary” (附屬公司) means a subsidiary within the meaning of section 2 of the Companies Ordinance (Cap. 32);

“Tribunal” (審裁處) means the Deposit Protection Appeals Tribunal established by section 40;

“trustee” (受託人) does not include a bare trustee;

“US Treasury Bill” (美國國庫券) means a security, with an original maturity of not more than 12 months, issued by the Department of Treasury of the United States of America.

(2) In this Ordinance, a reference to the performance of a function includes the exercise of a power and the discharge of a duty.

(3) If a deposit, or portion thereof, held by a depositor in a client account for a client is also held by the depositor as a trustee or bare trustee under a trust or bare trust, the deposit or portion is, for the purposes of this Ordinance, taken as being held by the depositor for the client and not as such trustee or bare trustee.

(4) For the avoidance of doubt, any reference in this Ordinance to the commission of an offence by every director and every chief executive of a Scheme member or a bank (including any grammatical variations or cognate expressions of such reference) means that one or more than one of any such director and chief executive may be prosecuted for the offence.

PART 2

HONG KONG DEPOSIT PROTECTION BOARD

3. Establishment of Hong Kong Deposit Protection Board

(1) There is established by this section a body corporate with the corporate name of “Hong Kong Deposit Protection Board” in English and “香港存款保障委員會” in Chinese.

(2) The Board—

(a) has perpetual succession under its corporate name;

(b) shall provide itself with a common seal; and

(c) is capable of suing and being sued in its corporate name.

(3) The Board is not a servant or agent of the Government nor does it enjoy any status, immunity or privilege of the Government.

4. Composition of Board

(1) The Board is to consist of—

- (a) the Secretary for Financial Services and the Treasury, or a person appointed by the Secretary, in writing, as his representative, as an ex officio member;
 - (b) the Monetary Authority, or a person appointed by the Authority, in writing, as his representative, as an ex officio member; and
 - (c) not fewer than 4 and not more than 7 other members appointed by the Chief Executive from among persons who, either because of their experience in finance, accounting, banking, law, administration, information technology or consumer affairs, or because of their professional or occupational experience, appear to the Chief Executive to be suitable for the appointment.
- (2) The following are not eligible for appointment under subsection (1)(c)—
- (a) a public officer;
 - (b) a person who is a director, or an employee, of—
 - (i) an authorized institution;
 - (ii) a holding company of an authorized institution;
 - (iii) a subsidiary of such a holding company; or
 - (iv) a subsidiary of an authorized institution.
- (3) The Chief Executive shall appoint one appointed member of the Board as Chairman of the Board.
- (4) The Chief Executive shall give notice of each appointment under subsection (1)(c) or (3) by notice published in the Gazette.
- (5) Schedule 2 has effect with respect to the Board.

5. Functions of Board

The Board has the following functions—

- (a) to establish and maintain the Scheme;
- (b) to manage and administer the Fund;
- (c) to assess and collect contributions and late payment fees;
- (d) to decide the entitlement of depositors and other persons to compensation under Division 2 of Part 5;
- (e) to pay compensation to depositors in accordance with this Ordinance;
- (f) to pay rebates or refunds of contributions to Scheme members in accordance with this Ordinance;
- (g) to recover from, or out of the assets of, the Scheme member concerned any amount of compensation paid to depositors from the Fund, together with any interest accrued thereon in accordance with section 38; and
- (h) such other functions as are imposed on it under this Ordinance.

6. Board to perform functions through Monetary Authority

(1) Unless otherwise directed by the Financial Secretary, the Board shall perform its functions under this Ordinance through the Monetary Authority.

(2) For the purposes of subsection (1), the Monetary Authority shall, under the direction of the Board, do all acts and things necessary for implementing the decisions of the Board.

(3) All costs and expenses incurred by the Monetary Authority for the purposes of subsection (1) shall be charged on the Exchange Fund.

(4) The Financial Secretary may, in relation to the costs and expenses that were charged under subsection (3) during such period as may be determined by him, direct that those costs and expenses, or such portion thereof as may be determined by him—

(a) shall be recoverable from the Fund; and

(b) shall, at a time determined by him, be paid to the Exchange Fund by the Board from the Fund.

(5) The Board shall comply with any direction given under subsection (4).

7. Powers of Board

The Board has power to do all such things as are necessary for, or incidental or conducive to, the performance of its functions and in particular, but without prejudice to the foregoing, may—

(a) borrow money from the Government or any other person for the purpose of performing its functions;

(b) claim from the liquidator or provisional liquidator of a failed Scheme member payment out of the assets of the failed Scheme member for reimbursement of the amount of compensation paid to the depositors concerned from the Fund, together with any interest accrued thereon in accordance with section 38;

(c) provide an indemnity to the liquidator or provisional liquidator of a failed Scheme member for the purpose of obtaining an early payment out of the assets of the failed Scheme member;

(d) make any compromise, agreement or arrangement—

(i) with the liquidator or provisional liquidator of a failed Scheme member, or with any other person, in respect of its claim against the assets of the failed Scheme member; or

(ii) with any person in respect of its claim against a Scheme member, in relation to which it is deemed under section 24 that a specified event never occurred;

(e) with the consent of the Financial Secretary, petition the Court of First Instance for the winding up of a Scheme member;

- (f) employ persons to assist the Board in the performance of its functions;
- (g) appoint persons as agents, or authorize persons—
 - (i) to assist the Board in the performance of its functions; or
 - (ii) where the Board is to perform its functions through the Monetary Authority, to assist the Monetary Authority in the performance of such functions;
- (h) appoint persons as advisers to assist the Board in the performance of its functions;
- (i) hold, acquire, lease, sell, charge, dispose of or otherwise deal with all kinds of property whether movable or immovable;
- (j) do all such things as the Board thinks fit in respect of its administration and management; and
- (k) exercise such other powers as are conferred on the Board under this Ordinance.

8. Board may issue guidelines

(1) The Board may issue, for the guidance of banks or depositors, guidelines not inconsistent with this Ordinance, indicating the manner in which it proposes to perform its functions under this Ordinance.

(2) The Board shall publish a guideline issued under this section in the Gazette.

(3) The Board may amend or revoke a guideline issued under this section. Subsection (2) applies to the amendment or revocation of a guideline in the same way as it applies to the issue of a guideline.

(4) A person does not incur a civil or criminal liability only because the person has contravened a guideline issued under this section. If in any legal proceedings the court is satisfied that such a guideline is relevant to determining a matter that is in issue in the proceedings—

- (a) the guideline is admissible in evidence in the proceedings; and
 - (b) proof that the person contravened or did not contravene the guideline may be relied on by any party to the proceedings as tending to establish or negate the matter.
- (5) A guideline issued under this section is not subsidiary legislation.
- (6) In this section, “court” (法院) includes a magistrate and the Tribunal.

9. Directions of Chief Executive in Council

(1) After consultation with the Chairman of the Board, the Chief Executive in Council may, on being satisfied that it is in the public interest to do so, give the Board such written directions as he thinks fit with respect to the performance of any of the Board’s functions under this Ordinance.

(2) The Board shall comply with any written direction given under subsection (1).

(3) If a written direction is given under subsection (1), a requirement under an Ordinance that the Board shall, for the purpose of performing any of the functions to which the written direction relates—

(a) form any opinion;

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

(c) consult any person,

does not apply for any purpose connected with the performance of functions pursuant to, or consequent upon, the written direction.

10. Exemption from taxation

The Board is exempt from taxation under the Inland Revenue Ordinance (Cap. 112).

PART 3

DEPOSIT PROTECTION SCHEME

11. Establishment of Deposit Protection Scheme

The Board shall, for the purposes of this Ordinance, establish and maintain a scheme to be known as the “Deposit Protection Scheme” in English and “存款保障計劃” in Chinese.

12. Membership of Scheme

(1) Subject to section 13, every bank is a member of the Scheme and remains as such until—

(a) the company ceases to be a bank by virtue of section 18(3) of the Banking Ordinance (Cap. 155); or

(b) its banking licence is revoked under that Ordinance.

(2) In the case of a bank the banking licence of which was granted on or before the commencement of this section, it becomes a member of the Scheme on that commencement.

(3) In the case of a bank the banking licence of which is granted after the commencement of this section, it becomes a member of the Scheme on the date on which its banking licence is granted.

13. Exemption

- (1) A bank may apply to the Board for an exemption from section 12(1).
- (2) An application under subsection (1) for an exemption is—
 - (a) to be made in the manner specified by the Board; and
 - (b) to be accompanied by such information and documents as the Board may reasonably require for the purpose of deciding whether the exemption should be granted.
- (3) The Board may, on receipt of an application under subsection (1) from a bank—
 - (a) exempt the bank from section 12(1); or
 - (b) refuse to so exempt the bank.
- (4) The Board shall not exempt a bank from section 12(1) unless it is satisfied that—
 - (a) the bank is incorporated outside Hong Kong;
 - (b) the deposits taken by the bank at its Hong Kong offices are protected by a deposit protection scheme, or other scheme of a similar nature, established and maintained in the jurisdiction in which the bank is incorporated; and
 - (c) the scope and level of protection available to those deposits under that scheme are not in all material respects narrower, and lower, than those that would be available to those deposits under the Scheme if the bank were not exempted.
- (5) If the Board exempts a bank from section 12(1)—
 - (a) it is a condition of the exemption—
 - (i) that the bank shall pay an annual exemption fee of such amount as may be specified by the Board from time to time;
 - (ii) that the bank shall forthwith notify the Board of any change of circumstances which may affect the exemption and, if so required by the Board, supply further information and documents to assist the Board in deciding whether the exemption should continue to be granted; and
 - (iii) where the bank is exempted from section 12(1) after having been a member of the Scheme, that the bank shall, in relation to any deposit taken by it before the date specified in the notice referred to in subsection (6) as the date on which the exemption takes effect—
 - (A) at the written request of the depositor made within 3 months after that date; and
 - (B) without imposing any fee or penalty on the depositor, repay the deposit, and pay the interest accrued thereon, prior to maturity; and

(b) the Board may impose such other conditions of the exemption as the Board considers appropriate.

(6) As soon as practicable after having made a decision on an application under subsection (1) from a bank, the Board shall give notice in writing to the bank of its decision and, in the case of a decision to refuse to exempt the bank from section 12(1) or to impose any condition under subsection (5)(b), the reasons for its decision.

(7) An exemption from section 12(1) remains in force until it is revoked by the Board.

(8) The Board may, by notice in writing given to a bank the subject of an exemption from section 12(1)—

(a) impose any further condition of the exemption as the Board considers appropriate;

(b) vary any condition imposed under paragraph (a) or subsection (5)(b);

(c) revoke any condition imposed under paragraph (a) or subsection (5)(b); or

(d) revoke the exemption if any condition of the exemption has not been or is not being complied with,

and shall, in the case of a decision to impose any further condition, vary any condition or to revoke an exemption, state the reasons for its decision in the notice.

(9) Before exercising its power under subsection (3)(b), (5)(b) or (8)(a), (b) or (d), the Board shall afford the bank an opportunity, within such period as the Board may specify in writing, being a period reasonable in all the circumstances, of being heard.

(10) A bank exempted from section 12(1) shall, as soon as practicable after the relevant time, inform in writing its depositors, or any person who is not already a depositor of the bank but has informed the bank that he intends to make a deposit with the bank—

(a) that it is not a member of the Scheme;

(b) that any deposit, in whole or in part, taken by the bank at any of its Hong Kong offices is not protected by the Scheme, but is protected by a deposit protection scheme, or other scheme of a similar nature, established and maintained in the jurisdiction in which the bank is incorporated; and

(c) of the following information about the scheme—

(i) the name, address, telephone number and website (if any) of the organization operating the scheme;

(ii) the scope and level of protection available to the deposits under the scheme;

(iii) the type of deposits protected by the scheme; and

(iv) any other information about the scheme, if any, as specified for this purpose in the conditions of the exemption.

(11) If a bank contravenes subsection (10), every director and every chief executive of the bank commits an offence and is liable—

- (a) on conviction on indictment to a fine of \$400,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(12) In subsection (10), “relevant time” (有關時間)—

- (a) in relation to the bank’s depositors, means the time when the bank receives the notice of decision of the Board given under subsection (6);
- (b) in relation to a person who is not already a depositor of the bank but has informed the bank that he intends to make a deposit with the bank, means the time when the person so informs the bank.

PART 4

DEPOSIT PROTECTION SCHEME FUND

14. Establishment of Deposit Protection Scheme Fund

(1) There is established by this section a fund to be known as the “Deposit Protection Scheme Fund” in English and “存款保障計劃基金” in Chinese.

(2) The Fund is to consist of—

- (a) contributions and late payment fees collected from Scheme members;
- (b) money recovered by the Board from, or out of the assets of, Scheme members;
- (c) returns on investments made under section 21;
- (d) money borrowed by the Board for the purpose of performing its functions; and
- (e) any other money lawfully paid into the Fund.

15. Contributions to Fund

(1) The Board shall assess the amount of contribution payable by each Scheme member.

(2) As soon as practicable after having made an assessment under subsection (1), the Board shall notify the Scheme member of the assessment in writing.

(3) A Scheme member shall pay to the Board, in the prescribed manner and within the prescribed period, the amount of contribution assessed by the Board.

(4) If a Scheme member fails to pay any contribution in contravention of subsection (3)—

(a) the Board may impose on the Scheme member a late payment fee of \$5,000, or of a sum equivalent to 10% of the amount of the contribution that remains to be paid by the Scheme member, whichever is the greater; and

(b) the Scheme member shall pay to the Board the contribution that remains to be paid by it, and the late payment fee, in the prescribed manner and within a period specified by the Board.

(5) The Board shall, on collecting any contribution or late payment fee from a Scheme member, pay it into the Fund.

(6) If a Scheme member contravenes subsection (4)(b), every director and every chief executive of the Scheme member commits an offence and is liable—

(a) on conviction on indictment to a fine of \$400,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(7) Schedule 4 has effect with respect to the contributions payable by a Scheme member and to rebates and refunds of contributions.

16. Payments from Fund

There shall be paid from the Fund, as required under this Ordinance, the following—

(a) expenses incurred—

(i) in investigating or deciding the entitlement of depositors and other persons to compensation under Division 2 of Part 5;

(ii) in relation to the Scheme;

(iii) in the exercise by the Board of the rights, powers and authorities vested in it by this Ordinance or rules made under section 51;

(b) expenses incurred in—

(i) the establishment and maintenance of the Scheme;

(ii) the management and administration of the Fund;

(c) expenses incurred in obtaining insurance, sureties, guarantees or other security, or in making any financial arrangement, in respect of any compensation paid under this Ordinance;

- (d) repayment of, and interest on, any money borrowed by the Board for the purpose of performing its functions;
- (e) such amounts of compensation as allowed under this Ordinance, and the costs of and incidental to paying the same;
- (f) such amounts of rebates and refunds of contributions as allowed under this Ordinance, and the costs of and incidental to paying the same;
- (g) expenses incurred by or in relation to the Tribunal;
- (h) any other money payable from the Fund in accordance with this Ordinance.

17. Financial year and estimates

(1) The Board may, with the prior approval of the Financial Secretary, fix a period to be the financial year of the Fund.

(2) As soon as practicable after the commencement of this section, the Board shall submit to the Financial Secretary, for his approval, estimates of the income and expenditure of the Fund for the first financial year of the Fund.

(3) In each financial year of the Fund, before a date to be fixed by the Financial Secretary, the Board shall submit to the Financial Secretary, for his approval, estimates of the income and expenditure of the Fund for the next financial year of the Fund.

18. Accounts

(1) The Board shall keep and maintain proper accounts and records of all transactions of the Fund.

(2) After the end of each financial year of the Fund, the Board shall cause to be prepared for the financial year a statement of accounts of the Fund that—

- (a) includes an income and expenditure account and balance sheet; and
- (b) is signed by the Chairman of the Board.

19. Auditors

(1) The Board shall, with the prior approval of the Financial Secretary, appoint an auditor, who may be the Director of Audit.

(2) The auditor is entitled—

- (a) to have access to such books of account and other records of the Fund; and

(b) to require such information and explanation, as he considers necessary to perform his functions.

(3) The auditor shall audit the statement of accounts prepared under section 18(2) and make a report to the Board on the audit of that statement.

(4) A report made under subsection (3) shall contain a statement by the auditor as to whether in his opinion the statement of accounts gives a true and fair view of the matters to which the statement of accounts relates.

20. Statements and reports to be laid before Legislative Council

(1) The Board shall, within 4 months after the end of each financial year of the Fund or such further time as the Financial Secretary may for any particular year allow, submit to the Financial Secretary—

- (a) a report on the activities of the Board for that financial year;
- (b) a copy of the statement of accounts prepared under section 18(2) for that financial year; and
- (c) a copy of the report made under section 19(3) on the audit of that statement.

(2) The Financial Secretary shall cause the reports and statement received by him under subsection (1) to be laid on the table of the Legislative Council.

21. Investment of money

(1) The Board may place, or invest, money of the Fund that is not immediately required by the Board for the performance of its functions in the following—

- (a) deposits with the Monetary Authority for the account of the Exchange Fund;
- (b) Exchange Fund Bills;
- (c) US Treasury Bills;
- (d) subject to subsection (2), exchange rate contracts or interest rate contracts, including derivative products;
- (e) any other investment approved by the Financial Secretary.

(2) The Board shall not place, or invest, money of the Fund in exchange rate contracts or interest rate contracts except for hedging purposes.

PART 5

COMPENSATION

Division 1—Preliminary

22. Occurrence of specified event

(1) In this Part—

(a) subject to section 24, a specified event has occurred in relation to a Scheme member if—

(i) a winding-up order has been made by the Court of First Instance in respect of the Scheme member; or

(ii) the Monetary Authority has served on the Board a notice of his decision in respect of the Scheme member under subsection (2),

whichever is the earlier;

(b) a reference to a date of the specified event, in relation to a Scheme member, means—

(i) if a specified event has occurred in relation to the Scheme member by virtue of paragraph (a)(i), the date on which the winding-up order in respect of the Scheme member is made;

(ii) if a specified event has occurred in relation to the Scheme member by virtue of paragraph (a)(ii), the date on which the notice is served on the Board under subsection (2).

(2) If—

(a) in respect of a Scheme member—

(i) a Manager within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) has been appointed under section 52 of that Ordinance; or

(ii) a provisional liquidator has been appointed; and

(b) the Monetary Authority is of the opinion that the Scheme member—

(i) is likely to become unable to meet its obligations;

(ii) is about to suspend payment to its depositors; or

(iii) is insolvent, has ceased to pay its debts in the ordinary course of business, or cannot pay its debts as they become due,

the Monetary Authority may, after consultation with the Financial Secretary, decide that compensation should be paid from the Fund to the depositors of the Scheme member in accordance with this Ordinance and shall thereupon serve on the Board a written notice of the Monetary Authority's decision.

(3) In the absence of evidence to the contrary, the Monetary Authority is deemed to have served on the Board a notice under subsection (2) if the notice has been left at the Board's address in Hong Kong.

(4) The Monetary Authority shall publish in the Gazette a copy of any notice served on the Board under subsection (2).

(5) If a specified event has occurred in relation to a Scheme member, the Board may exempt in writing the Scheme member, in whole or in part as specified in the exemption, from section 15 and from rules made under section 51.

(6) If a specified event has occurred in relation to a Scheme member by virtue of subsection (1)(a)(ii), the fact that—

(a) in the case where subsection (2)(a)(i) applies in relation to the occurrence, the appointment of the Manager is reversed by the Chief Executive in Council under section 53(1)(i) of the Banking Ordinance (Cap. 155) or is set aside by a court; or

(b) in the case where subsection (2)(a)(ii) applies in relation to the occurrence, the order appointing the provisional liquidator is discharged,

does not affect the operation of subsection (1)(a)(ii) in relation to the Scheme member.

23. Monetary Authority to report to Chief Executive in Council on occurrence of specified event

(1) Subject to subsection (2), the Monetary Authority shall, as soon as practicable after a specified event has occurred, report the occurrence to the Chief Executive in Council.

(2) If a specified event has occurred in relation to a Scheme member by virtue of section 22(1)(a)(ii), the Monetary Authority shall, before reporting the occurrence—

(a) in the case where the Scheme member is incorporated in Hong Kong—

(i) give the Scheme member not less than 7 days' notice in writing (or such lesser period as is permitted under subsection (3)) informing the Scheme member of—

(A) his decision under section 22(2) that compensation should be paid to the depositors of the Scheme member; and

(B) the reasons for his decision;

(ii) afford the Scheme member an opportunity to submit to him representations in writing on the decision and reasons within the period of the notice; and

- (iii) incorporate his decision, the reasons for his decision, and the Scheme member's representations, if any, in his report to the Chief Executive in Council;
- (b) in the case where the Scheme member is incorporated outside Hong Kong—
 - (i) give the Scheme member, at its principal place of business outside Hong Kong, not less than 7 days' notice in writing (or such lesser period as is permitted under subsection (3)) informing the Scheme member of—
 - (A) his decision under section 22(2) that compensation should be paid to the depositors of the Scheme member; and
 - (B) the reasons for his decision;
 - (ii) afford the Scheme member an opportunity to submit to him representations in writing on the decision and reasons within the period of the notice; and
 - (iii) incorporate his decision, the reasons for his decision, and the Scheme member's representations, if any, in his report to the Chief Executive in Council.

(3) The Monetary Authority may give a Scheme member less than 7 days' notice in writing referred to in subsection (2) if—

- (a) he has the consent of the Financial Secretary to do so; and
- (b) to do so is reasonable in the circumstances.

(4) If a specified event has occurred in relation to a Scheme member by virtue of section 22(1)(a)(ii), the Chief Executive in Council shall, as soon as practicable after receipt of the Monetary Authority's report on the occurrence, by notice in writing given to the Monetary Authority confirm or revoke the Monetary Authority's decision under section 22(2) that compensation should be paid to the depositors of the Scheme member.

(5) In determining whether to confirm or revoke under subsection (4) the Monetary Authority's decision, the Chief Executive in Council shall have regard to—

- (a) the interests of the depositors of the Scheme member;
- (b) the general stability and effective working of the banking system in Hong Kong; and
- (c) such other factors as the Chief Executive in Council considers appropriate in the public interest.

24. Specified event deemed never occurred under certain circumstances

- (1) Subject to subsection (3), if—

- (a) a specified event has occurred in relation to a Scheme member by virtue of section 22(1)(a)(i); and
- (b) the winding-up order in respect of the Scheme member is set aside by a court,

it is deemed, with effect on and after the date on which the setting aside takes effect, that the specified event never occurred.

(2) Subject to subsection (3), if—

- (a) a specified event has occurred in relation to a Scheme member by virtue of section 22(1)(a)(ii); and
- (b) the Monetary Authority's decision under section 22(2) that compensation should be paid to the depositors of the Scheme member—
 - (i) is revoked by the Chief Executive in Council under section 23(4); or
 - (ii) is set aside by a court,

it is deemed, with effect on and after the date specified in the notice of revocation as the date on which the revocation takes effect, or the date on which the setting aside takes effect, that the specified event never occurred and that the Monetary Authority had never served on the Board a notice of that decision.

(3) Subsection (1) or (2) does not operate to prejudice the legality and effect of anything done in accordance with this Ordinance pursuant to the specified event before the effective date referred to in that subsection.

25. Quantification date

(1) In this Part, “quantification date” (截算日), in relation to a Scheme member, means—

- (a) in the case where a specification is made under subsection (2) and has not been withdrawn under subsection (3), the date of the specified event in relation to the Scheme member;
- (b) in any other case, the date of appointment of a provisional liquidator in respect of the Scheme member.

(2) If a specified event has occurred in relation to a Scheme member, and the Board—

- (a) has knowledge that a provisional liquidator will not be appointed;
- (b) is of the opinion that it is uncertain whether a provisional liquidator will be appointed; or
- (c) is of the opinion that an appointment of a provisional liquidator will take so long as to unduly delay the payment of compensation to the depositors of the Scheme member by the Board,

the Board may make a specification for the purposes of subsection (1) that the quantification date, in relation to the Scheme member, means the date of the specified event in relation to the Scheme member.

(3) The Board may withdraw a specification made under subsection (2) if a provisional liquidator is appointed in respect of the Scheme member after the specification is made.

26. Protected deposits to include portion thereof

In this Part—

- (a) a reference to a protected deposit includes a portion of the deposit; and
- (b) in the case where a reference to a protected deposit means a portion of the deposit by virtue of paragraph (a), a reference to a portion of that protected deposit means a sub-portion of that portion.

Division 2—Entitlement to compensation

27. Entitlement to compensation: general

(1) Subject to section 31, a person is entitled, in respect of one or more protected deposits with a failed Scheme member that—

- (a) the person holds in his own right;
- (b) a depositor holds as a bare trustee for the person; or
- (c) a depositor holds in a client account for the person as the depositor's client,

to compensation of the specified amount from the Fund under section 28 or 29, but the total amount of compensation to which the person is so entitled in respect of the deposits concerned shall not exceed \$100,000, regardless of the number or amount of deposits.

(2) Subject to section 31, a person is entitled, in respect of one or more protected deposits with a failed Scheme member that the person holds as a trustee under one trust, to compensation of the specified amount from the Fund under section 30, but the total amount of compensation to which the person is so entitled in respect of the deposits held under that trust shall not exceed \$100,000, regardless of the number or amount of deposits.

(3) In subsections (1) and (2), “specified amount” (指明款額), in relation to compensation to which a person is entitled from the Fund, means the amount by which the aggregate amount, as at the date of the specified event, of the protected deposits in respect of which the person is so entitled exceeds the aggregate amount, as at that date, of the liabilities of the person to the failed Scheme member in respect of which—

- (a) in the case of the date of the specified event within the meaning of section 22(1)(b)(i), a right of set off exists in the winding up of the failed Scheme member;
- (b) in the case of the date of the specified event within the meaning of section 22(1)(b)(ii), a right of set off would have existed in the winding up of the failed Scheme member had a winding-up order been made in respect of it on that date,

plus or minus, as the case may be, the interest accrued on the deposits, or the liabilities, calculated up to and including the quantification date.

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

- (a) if any protected deposit or liabilities are not denominated in Hong Kong dollars, the deposit or liabilities shall be converted into Hong Kong dollars at the midpoint between the selling and buying telegraphic transfer rates of exchange quoted by HKAB on the quantification date or, where no such rates are quoted, at an exchange rate determined by the Board; and
- (b) in determining the amount of liabilities of the person to the failed Scheme member, the same rules shall apply with regard to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt, as if the failed Scheme member were a person so adjudged.

28. Entitlement to compensation: depositors in their own right

(1) Subject to this Division, if a depositor of a protected deposit with a failed Scheme member holds the deposit in his own right, the depositor is entitled, in respect of the deposit as at the date of the specified event, to compensation from the Fund.

(2) If the depositor consists of 2 or more persons—

- (a) in the case where the persons carry on business in partnership, those persons are, for the purpose of entitlement to compensation from the Fund, a single and continuing body of persons as distinct from the persons who may from time to time be the members of the partnership;
- (b) in any other case, each of those persons is entitled, in respect of his share in the protected deposit as at the date of the specified event, to compensation from the Fund.

(3) For the purposes of subsection (2)(b), each of the persons is deemed to have an equal share in the protected deposit unless the contrary is proved to the satisfaction of the Board.

29. Entitlement to compensation: bare trusts and client accounts

(1) Subject to this Division, if a depositor of a protected deposit with a failed Scheme member holds the deposit as a bare trustee under a bare trust, the beneficiary, but not the depositor, is entitled, in respect of the deposit as at the date of the specified event, to compensation from the Fund.

(2) Subject to this Division, if a depositor of a protected deposit with a failed Scheme member holds the deposit as a bare trustee under different bare trusts, the beneficiary of each of those trusts, but not the depositor, is entitled, in respect of the portion of the deposit held under the trust as at the date of the specified event, to compensation from the Fund.

(3) Subject to this Division, if a depositor of a protected deposit with a failed Scheme member holds the deposit in a client account for a client, the client, but not the depositor, is entitled, in respect of the deposit as at the date of the specified event, to compensation from the Fund.

(4) If the beneficiary or client consists of 2 or more persons—

(a) in the case where the persons carry on business in partnership, those persons are, for the purpose of entitlement to compensation from the Fund, a single and continuing body of persons as distinct from the persons who may from time to time be the members of the partnership;

(b) in any other case, each of those persons is entitled, in respect of his share in the protected deposit as at the date of the specified event, to compensation from the Fund.

(5) For the purposes of subsection (4)(b), each of the persons is deemed to have an equal share in the protected deposit unless the contrary is proved to the satisfaction of the Board.

30. Entitlement to compensation: trusts

(1) Subject to this Division, if a depositor of a protected deposit with a failed Scheme member holds the deposit as a trustee under a trust, the depositor is entitled, in respect of the deposit as at the date of the specified event, to compensation from the Fund as such trustee of the trust.

(2) Subject to this Division, if a depositor of a protected deposit with a failed Scheme member holds the deposit as a trustee under different trusts, the depositor is entitled, in respect of each portion of the deposit held under each of those trusts as at the date of the specified event, to compensation from the Fund as such trustee of the trust.

(3) If the depositor consists of 2 or more persons, those persons are, for the purpose of entitlement to compensation from the Fund, a single and continuing body of persons as distinct from the persons who may from time to time be the trustees.

31. Restrictions on entitlement to compensation

(1) If a depositor of a Scheme member or any other person is entitled, in respect of the depositor's protected deposit with the Scheme member, to compensation under this Division, any such compensation shall be paid to the depositor, but not any other person, in accordance with this Ordinance.

(2) No action to enforce any entitlement to compensation under this Division may be brought in any court unless the action is commenced within 5 years after the date of the specified event concerned.

(3) If a person has, in respect of a protected deposit or portion thereof, been paid an amount of compensation out of the Investor Compensation Fund established under section 236 of the Securities and Futures Ordinance (Cap. 571) in respect of a claim for compensation made under rules made under Part XII of that Ordinance, no person is entitled, in respect of the deposit or that portion (as the case may be), to compensation under this Division.

(4) If the Board has paid a depositor of a protected deposit the entire amount of compensation payable to the depositor in accordance with this Ordinance, no other person is entitled, in respect of the deposit, to compensation under this Division.

Division 3—Payment of compensation and related matters

32. Board's duties and powers on occurrence of specified event

- (1) If a specified event has occurred in relation to a Scheme member—
- (a) the Board shall as soon as practicable after the occurrence inform the depositors of the Scheme member by notice published in any daily newspaper in circulation in Hong Kong, or by other means the Board considers appropriate, of the occurrence; and
 - (b) the Board—
 - (i) may, for the purpose of performing its functions, require a depositor, or each depositor of a class of depositors, of the Scheme member to supply the Board with information and documents in support of the entitlement of the depositor or other persons to compensation under Division 2; and

- (ii) shall thereupon inform the depositors concerned by notice published in any daily newspaper in circulation in Hong Kong, or by other means the Board considers appropriate, of the requirement.
- (2) If a specified event has occurred in relation to a Scheme member—
- (a) the Board, or a person appointed as an agent of the Board or authorized by the Board under this Ordinance, may, for the purpose of the performance by the Board of its functions under this Ordinance, have access to the premises and records of the Scheme member; and
- (b) every director, chief executive, manager, employee or agent of the Scheme member, the liquidator or provisional liquidator of the Scheme member, or any person in possession of the records of the Scheme member, shall, subject to subsection (3)—
- (i) afford the Board, or a person appointed as an agent of the Board or authorized by the Board under this Ordinance, access to those records; and
- (ii) provide such assistance to the Board, or such a person so appointed or authorized, as the Board or person may require for the exercise of the power under paragraph (a).
- (3) The Board shall not require the disclosure by a solicitor or counsel of any privileged communication, whether oral or written, made to or by him in that capacity.
- (4) Any person who, without reasonable excuse, contravenes subsection (2)(b) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 6 months.
- (5) If a specified event has occurred in relation to a Scheme member, the Board shall decide in accordance with this Ordinance—
- (a) whether a depositor of the Scheme member or any other person is entitled, in respect of the depositor's protected deposit with the Scheme member, to compensation under Division 2; and
- (b) if he is, the amount of compensation to which he is entitled under Division 2.
- (6) In making a decision under subsection (5), the Board may rely on the records obtained from the Scheme member except to the extent of any manifest error that appears on the face of those records.
- (7) The Board shall as soon as practicable after a decision has been made under subsection (5)—
- (a) notify the depositor of its decision in writing; and
- (b) if applicable, pay the compensation, subject to section 35, to the depositor from the Fund.
- (8) In this section—
- “agent” (代理人), in relation to a Scheme member, includes—

- (a) the bankers and solicitors of the Scheme member; and
- (b) any persons, whether officers of the Scheme member or not, who are engaged as the auditors of the Scheme member;

“manager” (經理) has the meaning assigned to it by section 2(1) of the Banking Ordinance (Cap. 155);

“records” (紀錄), in relation to a Scheme member, includes books, accounts, records of transactions and information systems of the Scheme member.

(9) In this section, any reference to a director, chief executive, manager, employee or agent of a Scheme member includes a person who has been but no longer is a director, chief executive, manager, employee or agent of the Scheme member.

33. Board’s powers in relation to arrangements designed to increase amount of compensation

(1) Subsection (2) applies if—

- (a) an arrangement has been entered into or carried out on or after the relevant date in relation to a protected deposit with a Scheme member except where the arrangement is one in pursuance of a legally enforceable obligation incurred prior to that date;
- (b) the arrangement has, or would have had but for this section, the effect of enabling a person to become entitled to an amount of compensation under Division 2, to which the person would otherwise not be entitled; and
- (c) it would be concluded, having regard to—
 - (i) the manner in which, and the circumstances under which, the arrangement was entered into or carried out;
 - (ii) the form and substance of the arrangement; and
 - (iii) the result in relation to the operation of this Ordinance that, but for this section, would have been achieved by the arrangement,

that the arrangement was entered into or carried out for the sole or dominant purpose of enabling the person, either alone or in conjunction with other persons, to become entitled to an amount of compensation under Division 2, to which the person would otherwise not be entitled.

(2) The Board shall exercise its power under section 32(5)—

- (a) as if the arrangement or any part thereof had not been entered into or carried out; or
- (b) in such other manner as the Board considers appropriate to counteract the effect of the arrangement.

- (3) In this section—
- “arrangement” (安排) includes an arrangement, transaction, operation or scheme whether or not such arrangement, transaction, operation or scheme is enforceable, or intended to be enforceable, by legal proceedings;
- “relevant date” (有關日期), in relation to a Scheme member, means—
- (a) the date on which a Manager within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) is appointed in respect of the Scheme member under section 52 of that Ordinance; or
 - (b) the date on which the petition for the winding up of the Scheme member is presented,
- whichever is the earlier.

34. Compensation in Hong Kong dollars

Compensation payable in accordance with this Ordinance shall be paid in Hong Kong dollars regardless of the currency in which the protected deposit concerned is denominated.

35. Limits to amount of compensation

The amount of compensation payable to a depositor of a failed Scheme member in accordance with this Ordinance shall not exceed the amount in respect of which the depositor would, on the winding up of the failed Scheme member, be entitled to priority under section 265(1)(*db*) of the Companies Ordinance (Cap. 32).

36. Interim payment

If a specified event has occurred in relation to a Scheme member, and the Board considers that, in relation to a depositor of the Scheme member—

- (a) there is uncertainty as to the entire amount of compensation payable to the depositor in accordance with this Ordinance; or
- (b) the time required to ascertain the entire amount of compensation payable to the depositor in accordance with this Ordinance would be so long as to unduly delay the payment of compensation to the depositor by the Board,

the Board may make an interim payment of compensation to the depositor of such an amount as the Board considers appropriate.

37. Recovery of payment by Board

(1) If the amount of compensation paid, whether or not as an interim payment under section 36, to a depositor from the Fund is later found to be greater than the amount of compensation payable to the depositor in accordance with this Ordinance, the depositor shall repay the excess to the Board in a manner, and within a period, specified by the Board.

(2) If a depositor contravenes subsection (1)—

(a) the Board may impose on the depositor a late repayment fee of a sum not exceeding 5% of the amount of the excess that remains to be repaid by the depositor; and

(b) the depositor shall pay to the Board the late repayment fee in a manner, and within a period, specified by the Board.

(3) Such excess or late repayment fee as a depositor is required to repay or pay under this section is recoverable by the Board from the depositor as a debt due to the Board. The Board may, in relation to the excess or late repayment fee—

(a) determine, if it considers uneconomical to do so, not to recover the same from the depositor; or

(b) take such steps as it considers appropriate to recover the same from the depositor.

(4) The Board shall, on collecting any such excess or late repayment fee from a depositor, pay it into the Fund.

38. Subrogation

(1) If the Board makes a payment of compensation to a depositor of a Scheme member from the Fund—

(a) subject to subsection (2), the Board is, notwithstanding any rule of law, subrogated, to the extent of the net amount of that payment and, where the amount of that payment is calculated on the basis of a quantification date within the meaning of section 25(1)(a), any interest, calculated in accordance with subsection (5), accrued on the net amount of that payment, to all the rights and remedies of the depositor in relation to all his deposits, whether or not protected deposits, with the Scheme member, in priority over—

(i) the rights and remedies of the depositor in relation to those deposits; and

(ii) the rights and remedies of any person who is subrogated, whether or not before the Board's subrogation, to the rights and remedies of the depositor in relation to those deposits; and

(b) until the Board has been reimbursed in full the net amount of that payment and any interest accrued on that net amount in accordance with this section, the depositor, or any person who is subrogated, whether or not before the Board's subrogation, to the rights and remedies of the depositor in relation to those deposits, has no right in bankruptcy or winding up or by legal proceedings or otherwise to receive in respect of those deposits any amount from, or out of the assets of, the Scheme member.

(2) The Board is not subrogated to any rights and remedies of the depositor in respect of compensation payable out of the Investor Compensation Fund established under section 236 of the Securities and Futures Ordinance (Cap. 571).

(3) The Board may maintain an action in respect of the rights and remedies of a depositor to which it is subrogated in the name of the depositor or in its own name.

(4) For the avoidance of doubt, the rights and remedies of a depositor to which the Board is subrogated include the rights and remedies of the depositor in respect of so much of his deposits as the depositor would, on the winding up of the Scheme member, be entitled to priority under section 265(1)(db) of the Companies Ordinance (Cap. 32).

(5) For the purposes of subsection (1)(a), the net amount of a payment of compensation to a depositor accrues interest, at the rate set out in subsection (6), for the period beginning with the date of the payment and ending with—

- (a) in the case where the Court of First Instance has made a regulating order in respect of the Scheme member under section 227A of the Companies Ordinance (Cap. 32) and the Official Receiver or the liquidator has not required the depositor to make a formal proof of debt under section 227E of that Ordinance, the date of appointment of a provisional liquidator, or if no such appointment is made, the date of the winding-up order made by the Court of First Instance;
- (b) in the case where no regulating order has been made or where a regulating order has been made but the Official Receiver or the liquidator has required the depositor to make a formal proof of debt, the date of the winding-up order made by the Court of First Instance;
- (c) in any other case, the date on which the Board receives full reimbursement in respect of the net amount of that payment and the interest accrued on that net amount in accordance with this section.

- (6) The interest rate referred to in subsection (5) is—
- (a) the rate at which interest is for the time being payable in respect of a Hong Kong dollar savings account with deposit amount of \$100,000, quoted by the note-issuing banks within the meaning of section 2 of the Legal Tender Notes Issue Ordinance (Cap. 65); or
 - (b) if different rates are quoted by different note-issuing banks, the rate determined by the Board as the average of those rates.

(7) In this section, “net amount” (淨額), in relation to a payment of compensation made to a depositor of a Scheme member from the Fund, means the amount of the payment less the amount of excess, if any, that is recoverable by the Board from the depositor under section 37(3).

39. Reimbursement from provisional liquidator

The provisional liquidator of a failed Scheme member may, subject to the approval of the Court of First Instance, reimburse the Board out of the assets of the failed Scheme member for any amount of compensation paid to a depositor of the failed Scheme member from the Fund, together with any interest accrued thereon in accordance with section 38.

PART 6

REVIEW BY DEPOSIT PROTECTION APPEALS TRIBUNAL

40. Establishment of Deposit Protection Appeals Tribunal

(1) There is established by this section a tribunal to be known as the “Deposit Protection Appeals Tribunal” in English and “存款保障上訴審裁處” in Chinese.

(2) The function of the Tribunal is to review a decision or assessment the subject of an application under section 41(1), (2) or (3).

(3) For the purpose of reviewing a decision or assessment, the Tribunal is to consist of—

- (a) the Chairman of the Tribunal; and
- (b) such number of persons, not being fewer than 2, from the panel referred to in subsection (5) as the Financial Secretary may, on the recommendation of the Chairman, appoint to be members of the Tribunal to review the decision or assessment.

(4) The Chief Executive shall, on the recommendation of the Chief Justice, appoint a judge to be the Chairman of the Tribunal.

(5) The Chief Executive shall appoint a panel of persons, not being public officers, whom he considers suitable for appointment under subsection (3)(b) to be members of the Tribunal.

(6) The Chief Executive shall give notice of each appointment under subsections (4) and (5) by notice published in the Gazette.

(7) The Chairman (except where the Chairman is a judge, or a deputy judge, of the Court of First Instance), or members, of the Tribunal may be paid, as a fee for their services, such amount as the Chief Executive considers appropriate. Those amounts payable to the Chairman shall be a charge on the general revenue, and those amounts payable to the members shall be a charge on the Fund.

(8) Schedule 3 has effect with respect to the Tribunal.

(9) Subject to this section and Schedule 3 and to rules made under section 52, the Chairman of the Tribunal may determine the procedures and practice of the Tribunal.

(10) Where the Chief Executive considers appropriate, additional Tribunals may be established for the purposes of any reviews of decisions or assessments of the Board or of decisions of the Monetary Authority, whereupon the provisions of this or any other Ordinance shall apply, subject to necessary modifications, to each of such additional Tribunals (including appointment of the chairman and other members of, and all matters concerning, each of such additional Tribunals) as they apply to the Tribunal.

(11) In this section, “judge” (法官) means—

(a) a judge, or a deputy judge, of the Court of First Instance;

(b) a former Justice of Appeal of the Court of Appeal; or

(c) a former judge, or a former deputy judge, of the Court of First Instance.

41. Review of decisions or assessments by Tribunal

(1) Any person who is aggrieved by a decision of the Board under section 13(3)(b), (5)(b) or (8)(a), (b) or (d) or 32(5)(a) or (b) may apply to the Tribunal for a review of the decision.

(2) If a Scheme member is dissatisfied with the Board’s assessment under section 15(1) of the amount of contribution payable by the Scheme member, the Scheme member may apply to the Tribunal for a review of the assessment, but nothing in this subsection empowers a Scheme member to apply for a review of the MA supervisory rating of the Scheme member.

(3) Any person who is aggrieved by a decision specified in rules made under section 53 as a decision to which this section applies may apply to the Tribunal for a review of the decision.

(4) An application under subsection (1) or (2) is—

(a) to be made in writing by the applicant—

- (i) if the application relates to a decision of the Board under section 13(3)(b) or (5)(b), within 30 days after receiving the notice of decision of the Board given under section 13(6);
 - (ii) if the application relates to a decision of the Board under section 13(8)(a), (b) or (d), within 30 days after receiving the notice of the Board given under section 13(8);
 - (iii) if the application relates to a decision of the Board under section 32(5)(a) or (b), within 30 days after receiving the notice of decision of the Board given under section 32(7)(a);
 - (iv) if the application relates to the Board's assessment under section 15(1), within 30 days after receiving the notice of the assessment given under section 15(2),
or within a further time that the Tribunal may, in the circumstances of any particular case, think fit; and
- (b) to state the grounds for the review.
- (5) An application under subsection (3) is—
- (a) to be made in writing by the applicant within the time specified in rules made under section 53 as the time within which such an application is to be made; and
 - (b) to state the grounds for the review.
- (6) The Tribunal shall—
- (a) deliver to the Board a copy of any application under subsection (1) or (2) that it has received; and
 - (b) deliver to the Monetary Authority a copy of any application under subsection (3) that it has received.
- (7) An application under subsection (1), (2) or (3) does not suspend the decision or assessment to which the application relates.
- (8) As soon as practicable after receipt of a copy of an application delivered under subsection (6), the Board or the Monetary Authority shall forward a copy of the decision or assessment together with all other relevant papers to the Tribunal.
- (9) On receipt of the copy of the decision or assessment, and of the papers, forwarded under subsection (8), the Tribunal shall review the decision or assessment in question and, after taking into account the stated grounds for the review, may make its determination to do the following—
- (a) confirm, vary or set aside the decision or assessment;
 - (b) remit the matter to the Board or the Monetary Authority with any direction that it considers appropriate.
- (10) If the Tribunal sets aside a decision of the Board under section 13(3)(b) or (8)(d), the Tribunal may make such directions as it considers appropriate concerning the refund of the contribution that has been paid by the applicant.

(11) In reviewing a decision or assessment of the Board or a decision of the Monetary Authority, the Tribunal—

- (a) shall afford the applicant, and the Board or the Monetary Authority, an opportunity of being heard; and
- (b) may determine that any matter of fact has been established if it has been established on the basis of standard of proof applicable to civil proceedings in a court of law.

(12) As soon as practicable after completing the review, the Tribunal shall deliver its determination under subsection (9)(a) or (b), with the reasons for its determination.

(13) A determination made by the Tribunal shall be recorded in writing and signed by the Chairman of the Tribunal. The determination shall be registered in the Court of First Instance and shall be deemed to be an order of the Court upon registration.

(14) The determination of the Tribunal is final and is not subject to appeal except on a point of law.

(15) For the purposes of any proceedings in a court of law, a document purporting to be a determination of the Tribunal that is signed by the Chairman of the Tribunal shall, in the absence of proof to the contrary, be regarded as a determination of the Tribunal duly made, without proof of its making, or proof of signature, or proof that the person signing the determination was in fact the Chairman of the Tribunal.

42. Powers of Tribunal

(1) In relation to a review of a decision or assessment of the Board or a decision of the Monetary Authority, the Tribunal may—

- (a) receive and consider any material by way of oral evidence, written statements or documents, whether or not the material would be admissible in a court of law;
- (b) determine the manner in which any such material is received;
- (c) by notice in writing signed by the Chairman of the Tribunal, require a person to attend before it and, subject to subsection (2), to give evidence and produce any article, record or document in his possession or control relating to the subject matter of the review;
- (d) administer oaths;
- (e) examine or cause to be examined on oath or otherwise a person attending before it and require the person to answer truthfully any question which the Tribunal considers appropriate for the purpose of the review;
- (f) order a witness to provide evidence for the purpose of the review by affidavit;

- (g) order a person not to publish or otherwise disclose any material produced to the Tribunal;
 - (h) prohibit the publication or disclosure of any material the Tribunal receives at any sitting, or any part of a sitting, that is held in camera;
 - (i) stay any of the proceedings in the review on such grounds and on such terms and conditions as it considers appropriate having regard to the interests of justice;
 - (j) determine the procedure to be followed in connection with the review;
 - (k) order that costs be paid to any party to the review or any person who is required to attend before it for the purpose of the review;
 - (l) hear an application for stay of proceedings for a review by the applicant at any time before its determination is made; and
 - (m) exercise such other powers or make such other orders as may be necessary for or ancillary to the conduct of the review or the performance of its functions.
- (2) Subsection (1)(c) does not empower the Tribunal to require—
- (a) the banker or financial adviser of an applicant to disclose any information relating to the affairs of any person other than the applicant; or
 - (b) a solicitor or counsel to disclose any privileged communication, whether oral or written, made to or by him in that capacity.
- (3) A person commits an offence if he, without reasonable excuse—
- (a) fails to comply with an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to subsection (1);
 - (b) having been required by the Tribunal under subsection (1)(c) to attend before the Tribunal, leaves the place where his attendance is so required without the permission of the Tribunal;
 - (c) hinders or deters any person from attending before the Tribunal, giving evidence or producing any article, record or document, for the purpose of a review;
 - (d) threatens, insults or causes any loss to be suffered by any person who has attended before the Tribunal, on account of such attendance; or
 - (e) threatens, insults or causes any loss to be suffered by the Chairman, or any member, of the Tribunal at any time on account of the performance of his functions in that capacity.
- (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 an order, notice, prohibition or requirement of the Tribunal made or given under or pursuant to subsection (1) only on the ground that to do so might tend to incriminate the person.

43. Use of incriminating evidence required by Tribunal

Notwithstanding any other provisions of this Ordinance, where the Tribunal—

(a) requires a person to give evidence under section 42(1)(c);

(b) requires a person to answer any question under section 42(1)(e);

(c) orders a person to provide evidence under section 42(1)(f); or

(d) otherwise requires or orders a person to provide any information under section 42(1)(m),

and the evidence, answer or information might tend to incriminate the person, then the requirement or order as well as the evidence, the question and answer, or the information shall not be admissible in evidence against the person in criminal proceedings in a court of law other than those in which the person is charged with an offence under section 42(3)(a), or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the evidence, answer or information.

44. Contempt dealt with by Tribunal

(1) The Tribunal has the same powers as the Court of First Instance to punish for contempt.

(2) Without limiting the generality of the powers of the Tribunal under subsection (1), the Tribunal has the same powers as the Court of First Instance to punish for contempt, as if it were contempt of court, a person who, without reasonable excuse, commits any conduct falling within section 42(3).

(3) The Tribunal shall, in the exercise of its powers to punish for contempt under this section, adopt the same standard of proof as the Court of First Instance in the exercise of the same powers to punish for contempt.

(4) Notwithstanding anything in this section or any other provisions of this Ordinance—

(a) no power may be exercised under or pursuant to this section to determine whether to punish any person for contempt in respect of any conduct if—

- (i) criminal proceedings have previously been instituted against the person under section 42(3) in respect of the same conduct; and
 - (ii) (A) those criminal proceedings remain pending; or
(B) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under that section in respect of the same conduct;
- (b) no criminal proceedings may be instituted against any person under section 42(3) in respect of any conduct if—
- (i) any power has previously been exercised under or pursuant to this section to determine whether to punish the person for contempt in respect of the same conduct; and
 - (ii) (A) proceedings arising from the exercise of such power remain pending; or
(B) by reason of the previous exercise of such power, no power may again be lawfully exercised under or pursuant to this section to determine whether to punish the person for contempt in respect of the same conduct.

45. Appeal to Court of Appeal

(1) Where the Tribunal has delivered its determination under section 41(9)(a) or (b) on a review of—

- (a) a decision or assessment of the Board; or
- (b) a decision of the Monetary Authority,

the applicant, or the Board or the Monetary Authority (as the case may be), if dissatisfied with the determination, may appeal to the Court of Appeal against the determination on a point of law.

(2) The Court of Appeal may, in relation to a determination appealed against, do the following—

- (a) confirm, vary or set aside the determination;
- (b) remit the matter to the Tribunal with any direction that it considers appropriate.

(3) The Rules of the High Court (Cap. 4 sub. leg. A) apply in relation to such an appeal to the extent that those Rules are not inconsistent with this Ordinance.

(4) In an appeal under this section, the Court of Appeal may make such order for payment of costs as it considers appropriate.

PART 7

MISCELLANEOUS

46. Confidentiality

(1) Except so far as it is necessary for the performance of any function under this Ordinance or for carrying into effect the provisions of this Ordinance, a specified person—

- (a) shall not suffer or permit any person to have access to any matter relating to the affairs of any person that comes to the specified person's knowledge in the performance of any function under this Ordinance; and
 - (b) shall not communicate any such matter to any person other than the person to whom such matter relates.
- (2) Subsection (1) does not apply—
- (a) to the disclosure of information in summary form that is so framed as to prevent particulars relating to the business of any particular Scheme member from being ascertained from it;
 - (b) to the disclosure of information with a view to the institution of, or otherwise for the purpose of, any criminal proceedings, whether under this Ordinance or otherwise;
 - (c) in connection with any other legal proceedings arising out of this Ordinance;
 - (d) to the disclosure of information to the police or the Independent Commission Against Corruption, at the request of the Secretary for Justice, relevant to the proper investigation of any criminal complaint;
 - (e) to the disclosure of information with a view to the institution of, or otherwise for the purpose of, any disciplinary proceedings relating to the discharge of his professional duties by an auditor, or a former auditor, of a Scheme member or former Scheme member, whether or not the auditor or former auditor, as the case may be, was appointed for the purposes of section 48(3) or (4);
 - (f) to the disclosure of information to the Chief Executive, the Financial Secretary, the Monetary Authority, the Securities and Futures Commission, an investor compensation company recognized by the Commission under section 79 of the Securities and Futures Ordinance (Cap. 571) or any public officer

authorized by the Financial Secretary where the disclosure will, in the opinion of the Board, enable or assist the recipient of the information to perform his functions;

- (g) to the disclosure of information to an auditor, or a former auditor, of a Scheme member or former Scheme member for the purpose of enabling or assisting the Board to perform its functions under this Ordinance;
- (h) to the disclosure of information with the consent of—
 - (i) the person from whom the information was obtained or received; and
 - (ii) where the information does not relate to such person, the person to whom it relates;
- (i) to the disclosure of information which 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 section; or
- (j) to the disclosure of information required by law.

(3) The Board may attach a condition to any disclosure of information made pursuant to subsection (2)(b), (c), (d), (e), (f) or (j), and shall attach a condition to any disclosure of information made pursuant to subsection (2)(g), that neither—

- (a) the person to whom the information has been disclosed; nor
- (b) any person obtaining or receiving the information (whether directly or indirectly) from the person referred to in paragraph (a),

shall disclose that information to any other person without the consent of the Board.

(4) No person shall, without the written consent of the Monetary Authority given generally or in any particular case or class of cases, disclose to any other person—

- (a) any information regarding a Scheme member's MA supervisory rating or the amount of a Scheme member's contribution; or
- (b) any other information that would, by itself or together with other information, enable a Scheme member's MA supervisory rating or the amount of a Scheme member's contribution to be ascertained or inferred.

(5) Any specified person who contravenes subsection (1) 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) If a person, knowing that the condition referred to in subsection (3) has been attached to a disclosure of information made pursuant to subsection (2), contravenes that condition, the person 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) If a person contravenes subsection (4), the person or, where the person is a Scheme member, every director and every chief executive of the person, 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.
- (8) In this section, “specified person” (指明人士) means—
- (a) any person who—
 - (i) is or has been—
 - (A) a member of the Board;
 - (B) a related person of the Board; or
 - (C) a person employed by or assisting a related person of the Board; and
 - (ii) performs or has performed any function under this Ordinance; or
 - (b) the Monetary Authority, or a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66) to assist the Monetary Authority.

47. Immunity

(1) The Board, or a person who is, or is acting as, a member, or a related person, of the Board, is not liable for anything done, or omitted to be done, in good faith in the performance, or purported performance, of the functions of the Board.

(2) The Monetary Authority, or a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66) to assist the Monetary Authority, is not liable for anything done, or omitted to be done, in good faith in the performance, or purported performance, of the functions imposed on the Authority by or under this Ordinance.

48. Power of Board to obtain information

(1) The Board may require a Scheme member to submit (including periodically submit) such information as it may require for the performance of its functions, and such information shall be submitted within such period and in such manner as the Board may specify.

(2) Without prejudice to the generality of subsection (1), the Board may require a Scheme member to submit, within such period and in such manner as the Board may require, returns showing the amount of the relevant deposits maintained with the Scheme member and the breakdown of those relevant deposits.

(3) The Board may require a Scheme member to submit a report prepared by an auditor appointed by the Scheme member and approved by the Board as to whether or not, in the opinion of the auditor, information submitted pursuant to subsection (1) or a return submitted pursuant to subsection (2), is correctly compiled in all material respects.

(4) The Board may require a Scheme member to submit a report prepared by an auditor appointed by the Scheme member and approved by the Board as to whether or not, in the opinion of the auditor, the Scheme member has in place systems of control that are adequate to enable the Board to perform its functions.

(5) Nothing in this section empowers the Board to require a Scheme member to submit any information or report relating to any person who is—

- (a) a beneficiary for whom a deposit, or portion thereof, maintained with the Scheme member is held by a depositor as a trustee or bare trustee; or
- (b) a client for whom a deposit, or portion thereof, maintained with the Scheme member is held by a depositor in a client account.

(6) If a Scheme member, without reasonable excuse, fails to submit any information or return as required under subsection (1) or (2), every director and every chief executive of the Scheme member commits an offence and is liable—

- (a) on conviction on indictment to a fine of \$400,000 and to imprisonment for 2 years and to a further fine of \$20,000 for each day on which the failure continues; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and to a further fine of \$10,000 for each day on which the failure continues.

(7) If a Scheme member, without reasonable excuse, fails to submit an auditor's report as required under subsection (3) or (4), every director and every chief executive of the Scheme member commits an offence and is liable on conviction to a fine at level 6 and to a further fine of \$10,000 for each day on which the failure continues.

(8) Any person who signs any document to which subsection (1), (2), (3) or (4) relates and which he knows or reasonably ought to know 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.

(9) In this section—

“adequate” (足夠), in relation to systems of control, includes operating effectively; “systems of control” (管控制度) includes procedures.

49. False statements regarding Scheme membership and protected deposits

(1) No person shall, with intent to deceive, make any false, misleading or deceptive statement or representation as to whether or not—

(a) a person is a Scheme member; or

(b) a deposit, or any other financial product, is a protected deposit.

(2) Any person who contravenes subsection (1) commits an offence and is liable—

(a) on conviction on indictment to a fine of \$400,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

50. Defences

In any proceedings for an offence under section 13(11), 15(6), 46(7) or 48(6) or (7), it is a defence for the person charged to prove that he took reasonable precautions and exercised due diligence to avoid the commission of the offence by himself or any person under his control.

51. Power of Board to make rules

(1) The Board may, after consultation with the Financial Secretary and HKAB, make rules—

(a) prescribing the requirements in accordance with which Scheme members shall maintain those information systems and other records to which the Board would, on the occurrence of a specified event, have access under section 32(2)(a);

(b) prescribing the manner in which compensation is to be paid to depositors from the Fund;

(c) prescribing the manner in which—

- (i) contributions or late payment fees are to be paid by Scheme members; or
 - (ii) rebates or refunds of contributions are to be paid to Scheme members;
 - (d) requiring a Scheme member to make known to the public under specified circumstances—
 - (i) whether or not it is a member of the Scheme; or
 - (ii) whether or not a deposit, or any other financial product offered by the Scheme member, is a protected deposit, and prescribing the manner in which the requirement is to be complied with;
 - (e) prescribing anything required to be prescribed under this Ordinance other than Part 6 and section 5 of Schedule 3; and
 - (f) generally providing for the better performance of the functions of the Board.
- (2) Rules made under this section may—
- (a) provide that a contravention of a specified provision of the rules is an offence punishable—
 - (i) on conviction on indictment by a fine at level 6 and imprisonment for 2 years; or
 - (ii) on summary conviction by a fine at level 3 and imprisonment for 6 months; and
 - (b) provide for any specified defence to be available in proceedings for such an offence.
- (3) Rules made under this section shall not require a Scheme member to maintain any information system or other records that contain information or documents, or to submit any information or document, relating to any person who is—
- (a) a beneficiary for whom a deposit, or portion thereof, maintained with the Scheme member is held by a depositor as a trustee or bare trustee; or
 - (b) a client for whom a deposit, or portion thereof, maintained with the Scheme member is held by a depositor in a client account.

52. Power of Chief Justice to make rules

The Chief Justice may make rules—

- (a) providing for matters of procedure, or other matters, relating to applications for review, or reviews, under Part 6, which are not provided for in that Part or section 5 of Schedule 3;
- (b) providing for the issue or service of any document (however described) for the purposes of Part 6 or section 5 of Schedule 3; or
- (c) prescribing anything required to be prescribed under Part 6 or section 5 of Schedule 3.

53. Power of Monetary Authority to make rules

(1) The Monetary Authority may, after consultation with HKAB, make rules for the purpose of enabling a Scheme member, or each Scheme member of a class of Scheme members, to be required to maintain, in respect of the relevant deposits maintained with the Scheme member, assets in Hong Kong.

(2) Rules made under this section may—

- (a) empower the Monetary Authority to require a Scheme member, or each Scheme member of a class of Scheme members, to maintain, in respect of the relevant deposits maintained with the Scheme member, assets in Hong Kong in accordance with any requirement specified in the rules for the purpose;
- (b) empower the Monetary Authority to specify, for the purpose of an asset maintenance requirement, the amount of assets to be maintained in Hong Kong by the Scheme member, or each of the Scheme members, subject to the requirement;
- (c) specify the circumstances under which, and the manner in which, the Monetary Authority may issue an asset maintenance requirement;
- (d) specify—
 - (i) the assets that are to be regarded as assets in Hong Kong;
 - (ii) the extent to which, and the manner in which, certain assets are to be taken into account; and
 - (iii) other matters to be taken into account, for the purpose of determining whether an asset maintenance requirement has been complied with;
- (e) require that the Monetary Authority shall, before issuing an asset maintenance requirement, afford the Scheme member an opportunity of being heard;
- (f) specify the time within which, and the manner in which, a Scheme member is to be heard before an asset maintenance requirement is issued;
- (g) enable any person aggrieved by an asset maintenance requirement to apply to the Tribunal for a review of the decision;
- (h) specify the time within which, and the manner in which, such an application is to be made;
- (i) provide that every director and every chief executive of a Scheme member that contravenes an asset maintenance requirement commits an offence and is liable—
 - (i) on conviction on indictment to a fine of \$400,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$20,000 for each day during which the offence continues; or

- (ii) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$10,000 for each day during which the offence continues;
- (j) provide for any specified defence to be available in proceedings for such an offence; and
- (k) provide for any other matter relating to the asset maintenance requirement.

(3) In this section, “asset maintenance requirement” (維持資產規定) means the requirement, referred to in subsection (2)(a), by the Monetary Authority of a Scheme member, or each Scheme member of a class of Scheme members, to maintain assets in Hong Kong.

54. Amendment of Schedules

(1) The Chief Executive in Council may, by notice published in the Gazette, amend Schedule 1, 2, 3 or 4.

(2) In amending Schedule 4, the Chief Executive in Council shall ensure that the Fund should, so far as practicable, be made up of money derived from the banking industry.

55. Consequential and other amendments

The enactments specified in Schedule 5 are amended as set out in that Schedule.

SCHEDULE 1

[ss. 2 & 54]

DEPOSITS SPECIFIED FOR PURPOSES OF DEFINITIONS OF “PROTECTED DEPOSIT” AND “RELEVANT DEPOSIT” IN SECTION 2(1) OF THIS ORDINANCE

1. For the purpose of the definition of “protected deposit” in section 2(1) of this Ordinance, the following deposits are specified—

- (a) a term deposit where the current term agreed to by the depositor at the most recent time it was negotiated exceeds 5 years;
- (b) a deposit the repayment of which is secured either in whole or in part on the assets of the Scheme member;
- (c) a bearer instrument;
- (d) a deposit taken by the Scheme member at any of its offices outside Hong Kong;
- (e) a deposit held for the account of the Exchange Fund;
- (f) a deposit held by an excluded person in his own right, or, in the case of a deposit held by an excluded person and a non-excluded person in their own right (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person’s share in the deposit;
- (g) a deposit held by a depositor as a bare trustee for an excluded person, or in a client account for an excluded person as the depositor’s client, or, in the case of a deposit so held for an excluded person and a non-excluded person (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person’s share in the deposit;
- (h) a deposit held by a depositor as a trustee for an excluded person only.

2. For the purpose of the definition of “relevant deposit” in section 2(1) of this Ordinance, the following deposits are specified—

- (a) a term deposit where the current term agreed to by the depositor at the most recent time it was negotiated exceeds 5 years;
- (b) a deposit the repayment of which is secured either in whole or in part on the assets of the Scheme member;
- (c) a bearer instrument;
- (d) a deposit taken by the Scheme member at any of its offices outside Hong Kong;
- (e) a deposit held for the account of the Exchange Fund;
- (f) a deposit held by an excluded person in his own right, or, in the case of a deposit held by an excluded person and a non-excluded person in their own right (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person’s share in the deposit.

3. In this Schedule—

“excluded person” (豁除人士), in relation to a deposit maintained with a Scheme member, means—

- (a) a related company of the Scheme member;
- (b) a multilateral development bank as defined in paragraph 1 of the Third Schedule to the Banking Ordinance (Cap. 155);
- (c) an authorized institution;
- (d) a foreign bank; or
- (e) in relation—
 - (i) to the definition of “protected deposit” in section 2(1) of this Ordinance for the purposes of Part 5 of this Ordinance, an officer of the Scheme member or its related company on—
 - (A) the date immediately preceding the date on which a Manager within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) is appointed in respect of the Scheme member under section 52 of that Ordinance; or
 - (B) the date on which the petition for the winding up of the Scheme member is presented,whichever is the earlier;
 - (ii) to the definition of “protected deposit” in section 2(1) of this Ordinance for any other purpose and to the definition of “relevant deposit” in that section, an officer of the Scheme member or its related company;

“foreign bank” (外地銀行) means a company that—

- (a) is incorporated outside Hong Kong;
- (b) is not an authorized institution; and
- (c) may, in or outside the place where it is incorporated, lawfully take deposits from the general public (whether or not on current account), or is authorized or recognized as a bank in that place;

“non-excluded person” (非豁除人士) means—

- (a) in relation to the definition of “protected deposit” in section 2(1) of this Ordinance for the purposes of Part 5 of this Ordinance, a person who is not an excluded person within the meaning of paragraph (a), (b), (c), (d) or (e)(i) of the definition of “excluded person”;
- (b) in relation to the definition of “protected deposit” in section 2(1) of this Ordinance for any other purpose and to the definition of “relevant deposit” in that section, a person who is not an excluded person within the meaning of paragraph (a), (b), (c), (d) or (e)(ii) of the definition of “excluded person”;

“officer” (人員)—

- (a) in relation to a Scheme member or its related company that is an authorized institution, means—
 - (i) a director of the Scheme member or the company;
 - (ii) a chief executive of the Scheme member or the company;
 - (iii) a controller, within the meaning of section 2(1) of the Banking Ordinance (Cap. 155), of the Scheme member or the company; or
 - (iv) a manager, within the meaning of that section, of the Scheme member or the company;

(b) in relation to a Scheme member's related company that is not an authorized institution, has the meaning assigned to it by section 2(1) of the Companies Ordinance (Cap. 32);

“related company” (關連公司), in relation to a Scheme member, means—

- (a) a holding company of the Scheme member;
- (b) a subsidiary of the holding company; or
- (c) a subsidiary of the Scheme member.

4. For the purposes of sections 1(f) and (g) and 2(f), if a deposit is held by more than one person in their own right or held for more than one person, each of those persons is deemed to have an equal share in the deposit unless the contrary is proved to the satisfaction of the Board.

SCHEDULE 2

[ss. 4 & 54]

PROVISIONS RELATING TO BOARD

1. Seal

(1) The affixing of the common seal of the Board shall be authenticated by the signature of any 2 members of the Board.

(2) Any document purporting to be a document duly executed under the seal of the Board shall be received in evidence and is, unless the contrary is proved, to be deemed to be a document so executed.

2. Tenure of appointed members

(1) An appointed member of the Board shall be appointed for a term not exceeding 3 years.

(2) On the expiry of his period of appointment or reappointment, an appointed member of the Board is eligible for reappointment for such further term as the Chief Executive may specify.

(3) An appointed member of the Board may resign from office by giving notice in writing to the Chief Executive. A notice of resignation takes effect on the date specified in the notice or, if no date is specified, on the date of receipt by the Chief Executive of the notice.

(4) If the Chairman of the Board is absent from Hong Kong or is for any other reason unable to perform the functions of his office as Chairman, the Chief Executive may appoint another appointed member of the Board to be the temporary Chairman in his place during his absence or incapacity.

(5) If an appointed member of the Board, other than the Chairman, is absent from Hong Kong or is for any other reason unable to perform the functions of his office as member, the Chief Executive may appoint another person to be a temporary member in his place during his absence or incapacity.

(6) If a person is appointed as the temporary Chairman, or a temporary member, of the Board, the person may perform all the functions of the Chairman, or member, in whose place the person is appointed.

3. Terms and conditions of appointment of members

All matters relating to the terms and conditions of the appointment of the members (other than ex officio members) of the Board are to be determined by the Chief Executive.

4. Removal of appointed members

If the Chief Executive is satisfied that an appointed member of the Board—

- (a) has become bankrupt, is incapacitated by physical or mental illness, or is otherwise unable or unfit to perform the functions of a member of the Board; or
- (b) has become—
 - (i) a public officer; or
 - (ii) a director or an employee of—
 - (A) an authorized institution;
 - (B) a holding company of an authorized institution;
 - (C) a subsidiary of such a holding company; or
 - (D) a subsidiary of an authorized institution,

the Chief Executive may declare his office as member of the Board to be vacant, and shall notify the fact in such manner as the Chief Executive thinks fit; and upon such declaration the office becomes vacant.

5. Meetings and proceedings of Board

- (1) Meetings of the Board are to be held at such times and places as the Chairman of the Board may decide.
- (2) The quorum for meetings of the Board is 4.
- (3) Subject to the provisions of this Schedule, the Board may determine its own procedures.
- (4) At a meeting of the Board—
 - (a) the Chairman of the Board shall preside;
 - (b) each member of the Board present has one vote; and
 - (c) every question for decision shall be determined by a majority of votes of the members of the Board present and, in the case of an equality of votes, the Chairman of the Board has a casting vote.

6. Transaction of business by circulation of papers

The Board may transact any of its business by circulation of papers, and a resolution in writing which is approved in writing by all the members of the Board present in Hong Kong (being not less than the number required to constitute a majority of the Board) is as valid and effectual as if it had been duly passed at a meeting of the Board by the votes of the members of the Board so approving the resolution.

7. Committees

The Board may appoint committees for any general or special purposes as it thinks fit and, in relation to such a committee—

- (a) the chairman shall be appointed by the Board; and
- (b) the chairman and at least two-thirds of the other members are to be members of the Board.

8. Conflict of interests

(1) A member of the Board who is in any way directly or indirectly interested in a contract made or proposed to be made by the Board, shall disclose the nature of his interest at a meeting of the Board. The disclosure shall be recorded in the minutes of the Board, and the member may not without the permission of the Chairman of the Board take any part in any deliberation of the Board with respect to that contract and may not in any event vote on any question concerning it.

(2) For the purposes of subsection (1), a general notice given at a meeting of the Board by a member of the Board to the effect that he is a member of a specified company or firm and is to be regarded as interested in any contract that may, after the date of the notice, be made with the company or firm is regarded as a sufficient disclosure of his interest in relation to any contract so made or proposed to be so made.

(3) A member of the Board need not attend in person at a meeting of the Board in order to make a disclosure which he is required to make under subsection (1) if he takes reasonable steps to secure that the disclosure is made by a notice which is brought up and read at the meeting.

SCHEDULE 3

[ss. 40, 51, 52 & 54]

PROVISIONS RELATING TO TRIBUNAL

1. Interpretation

In this Schedule—

“panel member” (小組成員) means a member of the panel referred to in section 40(5) of this Ordinance;

“parties” (各方)—

(a) in relation to a review of a decision or assessment of the Board, means the applicant or the Board;

(b) in relation to a review of a decision of the Monetary Authority, means the applicant or the Monetary Authority;

“Tribunal member” (審裁處成員) means a member of the Tribunal appointed under section 40(3)(b) of this Ordinance.

2. Tenure of Chairman

(1) The Chairman of the Tribunal shall be appointed for a term not exceeding 3 years or appointed to act in relation to any specified review.

(2) On the expiry of his period of appointment or reappointment, the Chairman of the Tribunal is eligible for reappointment.

(3) The Chairman of the Tribunal may resign from office by giving notice in writing to the Chief Executive. A notice of resignation takes effect on the date specified in the notice or, if no date is specified, on the date of receipt by the Chief Executive of the notice.

(4) If the Chief Executive is satisfied that the Chairman of the Tribunal—

(a) has become bankrupt;

(b) is incapacitated by physical or mental illness; or

(c) is otherwise unable or unfit to perform the functions of the Chairman of the Tribunal,

the Chief Executive may, after consultation with the Chief Justice, declare his office as Chairman of the Tribunal to be vacant, and shall notify the fact in such manner as the Chief Executive thinks fit; and upon such declaration the office becomes vacant.

(5) If a review has been commenced by the Tribunal but not completed before the expiry of the term of office of the Chairman of the Tribunal, the Chief Executive may authorize the Chairman to continue to act as the Chairman for the purpose of completing the review.

3. Tenure of panel members

(1) A panel member shall be appointed for a term not exceeding 3 years.

(2) On the expiry of his period of appointment or reappointment, a panel member is eligible for reappointment for such further term as the Chief Executive may specify.

(3) A panel member may resign from office by giving notice in writing to the Chief Executive. A notice of resignation takes effect on the date specified in the notice or, if no date is specified, on the date of receipt by the Chief Executive of the notice.

(4) If the Chief Executive is satisfied that a panel member—

(a) has become bankrupt;

(b) is incapacitated by physical or mental illness;

(c) is otherwise unable or unfit to perform the functions of a Tribunal member; or

(d) has become a public officer,

the Chief Executive may declare his office as panel member to be vacant, and shall notify the fact in such manner as the Chief Executive thinks fit; and upon such declaration the office becomes vacant.

4. Tenure of Tribunal members

(1) A Tribunal member may resign from office by giving notice in writing to the Financial Secretary. A notice of resignation takes effect on the date specified in the notice or, if no date is specified, on the date of receipt by the Financial Secretary of the notice.

(2) If a Tribunal member ceases to be a panel member, he ceases to be such Tribunal member.

5. Sittings

(1) The Chairman of the Tribunal shall convene such sittings of the Tribunal as are necessary to determine a review.

(2) Before convening a sitting under subsection (1) in respect of a review, the Chairman of the Tribunal may give directions to the parties to the review concerning—

- (a) procedural matters to be complied with by the parties; and
- (b) the time within which the parties are required to comply with such matters.

(3) At a sitting of the Tribunal—

- (a) the Chairman of the Tribunal shall preside;
- (b) not fewer than 2 Tribunal members shall also be present; and
- (c) every question before the Tribunal shall be determined by the opinion of the majority of those referred to in paragraphs (a) and (b) except a question of law which shall be determined by the Chairman of the Tribunal alone.

(4) Every sitting of the Tribunal shall be held in public unless the Tribunal, on its own motion or on the application of any of the parties to the review, determines that in the interests of justice a sitting, or any part of a sitting, shall not be held in public in which case it may hold the sitting, or the relevant part of the sitting, as the case may be, in camera.

(5) If an application is made pursuant to subsection (4) for a determination that a sitting, or any part of a sitting, shall not be held in public, a hearing of the application shall be held in camera.

(6) The parties to a review shall, at any sitting of the Tribunal relating to the review, be entitled to be heard—

- (a) in person, or—
 - (i) in the case of the Board or a corporation, through its officer or its employee;
 - (ii) in the case of the Monetary Authority, through a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66) to assist the Monetary Authority; and
- (b) through counsel or a solicitor or, with the leave of the Tribunal, through any other person.

(7) The Chairman of the Tribunal shall prepare or cause to be prepared a record of the proceedings at any sitting of the Tribunal, which shall contain such particulars relating to the proceedings as he considers appropriate.

6. Miscellaneous

Except as otherwise provided in this Ordinance, the Tribunal, its Chairman and its members, and the parties to, and any witness, counsel, solicitor, or any other person involved in, a review, shall have the same privileges and immunities in respect of the review as they would have if the review were civil proceedings before the Court of First Instance.

SCHEDULE 4

[ss. 2, 15 & 54]

CONTRIBUTIONS TO FUND

1. Interpretation

- (1) In this Schedule, unless the context otherwise requires—
“amount of relevant deposits” (有關存款款額), in relation to a Scheme member, does not, subject to subsection (2), include—
- (a) where—
 - (i) the amount of one or more relevant deposits held by one person, as a depositor, with the Scheme member in his own right exceeds \$100,000;
 - (ii) the amount of one or more relevant deposits held by a depositor with the Scheme member as a bare trustee under one bare trust exceeds \$100,000;
 - (iii) the amount of the relevant deposit held by a depositor with the Scheme member in one client account exceeds \$100,000; or
 - (iv) the amount of one or more relevant deposits held by a depositor with the Scheme member as a trustee under one trust exceeds \$100,000, the amount in excess of \$100,000; or
 - (b) any amount of interest accrued on relevant deposits;
- “build-up levy” (建立期徵費) means the build-up levy payable by a Scheme member under section 3(4);
“expected loss levy” (預期損失徵費) means the expected loss levy payable by a Scheme member under section 4(2);
“surcharge” (附加費) means the surcharge payable by a Scheme member under section 5(2);
“target fund size” (基金目標金額), in relation to a year, means the size of the Fund that the Board seeks to achieve and maintain for that year.
- (2) In the definition of “amount of relevant deposits”—
- (a) a reference to a relevant deposit includes a portion of the deposit;
 - (b) for the purposes of paragraph (a)(i) of that definition, if a depositor consists of 2 or more persons—
 - (i) subject to subparagraph (ii), each of the persons is deemed to have an equal share in the deposit unless the contrary is proved to the satisfaction of the Board;
 - (ii) in the case where the persons carry on business in partnership, those persons are a single and continuing body of persons as distinct from the persons who may from time to time be the members of the partnership; and
 - (c) for the purposes of paragraph (a)(ii) and (iv) of that definition, if the depositor consists of 2 or more persons, those persons are a single and continuing body of persons as distinct from the persons who may from time to time be the bare trustees or trustees.
- (3) For the purposes of this Schedule, the target fund size is reached in a particular year if the sum of—
- (a) the aggregate amount of contributions payable by all Scheme members for that particular year; and
 - (b) the balance of the Fund as at 20 October of the immediately preceding year,
- is equal to or greater than the target fund size for that particular year.

2. Calculation of target fund size and balance of Fund

- (1) For the purposes of this Schedule, the target fund size for any particular year is the specified percentage of the aggregate of the amount of relevant deposits maintained with each of the Scheme members as at 20 October of the immediately preceding year.

(2) For the purposes of this Schedule, the balance of the Fund as at 20 October of any year is the amount by which the total assets of the Fund exceed its total liabilities as shown in a balance sheet of the Fund, as at that date, prepared by the Board.

(3) In this section, “specified percentage” (指明百分比) means 0.3%.

3. Build-up levy

(1) This section applies to any year up to and including the year in which the target fund size has been reached for the first time after the commencement of this Schedule.

(2) If, after the year in which the target fund size has been reached for the first time after the commencement of this Schedule, the target fund size for a particular year becomes, as a result of a specified amendment, greater than the balance of the Fund as at 20 October of the immediately preceding year, this section also applies to—

(a) that particular year; and

(b) any subsequent year up to and including the year in which the target fund size is reached for the first time after the commencement of that specified amendment.

(3) If, after the year in which the target fund size has been reached for the first time after the commencement of a specified amendment, the target fund size for a particular year becomes, as a result of another specified amendment, greater than the balance of the Fund as at 20 October of the immediately preceding year, this section also applies to—

(a) that particular year; and

(b) any subsequent year up to and including the year in which the target fund size is reached for the first time after the commencement of that other specified amendment.

(4) A build-up levy is payable by a Scheme member for any year to which this section applies.

(5) Subject to subsections (6) and (7) and section 6, the amount of build-up levy payable by a Scheme member for any year is the sum calculated by multiplying the amount of relevant deposits maintained with the Scheme member as at 20 October of the immediately preceding year by the percentage specified in column 2 of the following Table opposite the MA supervisory rating of the Scheme member specified in column 1 of that Table.

TABLE

Column 1 MA supervisory rating	Column 2 Percentage
1	0.05%
2	0.08%
3	0.11%
4 or 5	0.14%

(6) If the amount by which the target fund size for a particular year exceeds the balance of the Fund as at 20 October of the immediately preceding year is smaller than the aggregate amount of build-up levies that would, but for this subsection, have been payable by all Scheme members for that particular year in accordance with subsection (5), the amount of build-up levy payable by a Scheme member for that particular year is such portion of the amount of build-up levy that would have been payable by the Scheme member for that year in accordance with subsection (5) that such amount of excess bears to such aggregate amount.

(7) If the target fund size for a particular year does not exceed the balance of the Fund as at 20 October of the immediately preceding year, no build-up levy is payable for that particular year.

(8) For the avoidance of doubt, the percentage specified in column 2 of the Table in subsection (5) may be revised by way of an amendment to this section before, during or after the year in which the target fund size is reached for the first time after the commencement of this Schedule.

(9) In this section, “specified amendment” (指明的修訂) means an amendment to the definition of “specified percentage” in section 2(3).

4. Expected loss levy

(1) This section applies to any year after the year in which the target fund size has been reached for the first time after the commencement of this Schedule, except a year to which section 3 applies by virtue of subsection (2) or (3) of that section.

(2) An expected loss levy is payable by a Scheme member for any year to which this section applies.

(3) Subject to section 6, the amount of expected loss levy payable by a Scheme member for any year is the sum calculated by multiplying the amount of relevant deposits maintained with the Scheme member as at 20 October of the immediately preceding year by the percentage specified in column 2 of the following Table opposite the MA supervisory rating of the Scheme member specified in column 1 of that Table.

TABLE

Column 1 MA supervisory rating	Column 2 Percentage
1	0.0075%
2	0.01%
3	0.015%
4 or 5	0.02%

(4) For the avoidance of doubt, the percentage specified in column 2 of the Table in subsection (3) may be revised by way of an amendment to this section before, during or after the year in which the target fund size is reached for the first time after the commencement of this Schedule.

5. Surcharge

(1) This section applies to any year—

(a) to which section 4 applies; and

(b) 70% of the target fund size for which is greater than the balance of the Fund as at 20 October of the immediately preceding year.

(2) A surcharge is payable by a Scheme member for any year to which this section applies.

(3) Subject to section 6, the amount of surcharge payable by a Scheme member for any year is a specified portion of the amount of build-up levy that would have been payable by the Scheme member for that year in accordance with section 3(5) as if section 3 applied to that year.

(4) The aggregate amount of surcharges payable by all Scheme members for any year is—

(a) the difference between—

(i) the aggregate amount of build-up levies that would have been payable by all Scheme members for that year in accordance with section 3(5) as if section 3 applied to that year; and

(ii) the aggregate amount of expected loss levies payable by all Scheme members for that year in accordance with section 4(3); or

(b) 30% of the amount by which the target fund size for that year exceeds the balance of the Fund as at 20 October of the immediately preceding year,

whichever is the lower.

(5) In this section, “specified portion” (指明部分), in relation to the amount of build-up levy that would have been payable for a year, means the portion that the aggregate amount of surcharges payable by all Scheme members for that year, calculated in accordance with subsection (4), bears to the aggregate amount of build-up levies that would have been payable by all Scheme members for that year, calculated in accordance with subsection (4)(a)(i).

6. Calculation of contribution for new Scheme members

(1) The amount of contribution payable by a Scheme member for the year in which it becomes a member of the Scheme by virtue of section 12(3) of this Ordinance—

- (a) shall be calculated on the basis of the amount of relevant deposits maintained with the Scheme member as at the date it becomes a member of the Scheme but not 20 October of the immediately preceding year; and
- (b) is that proportion of the amount of projected full-year contribution for that year that the number of days during which the Scheme member is a member of the Scheme in that year bears to 365.

(2) If a Scheme member becomes a member of the Scheme by virtue of section 12(3) of this Ordinance after 20 October in any particular year, the amount of contribution payable for the subsequent year shall be calculated on the basis of the amount of relevant deposits maintained with the Scheme member as at the date it becomes a member of the Scheme but not 20 October of that particular year.

(3) In this section, “projected full-year contribution” (預計全年供款), in relation to a year in which a Scheme member becomes a member of the Scheme by virtue of section 12(3) of this Ordinance, means the amount of contribution that would have been payable by the Scheme member if that Scheme member had been a member of the Scheme during the whole of that year.

7. Minimum amount of contribution

Notwithstanding anything in this Schedule, if the amount of contribution payable by a Scheme member for any year is less than \$50,000, a minimum contribution equal in amount to that proportion of \$50,000 that the number of days during which the Scheme member is a member of the Scheme in that year bears to 365 is payable by the Scheme member for that year.

8. Rebate

(1) A rebate shall be made by the Board in any year if 115% of the target fund size for that year is smaller than the balance of the Fund as at 20 October of the immediately preceding year.

(2) For any year in which a rebate is required to be made by the Board, the amount of rebate payable to a Scheme member is such portion of the aggregate amount of rebates payable to all Scheme members in that year, calculated in accordance with subsection (3), that the amount of net contribution by the Scheme member during the relevant period bears to the aggregate of the amount of net contribution by each of the Scheme members during the same period.

(3) The aggregate amount of rebates payable to all Scheme members in any particular year is 30% of the amount by which the balance of the Fund as at 20 October of the immediately preceding year exceeds the target fund size for that particular year.

(4) In this section—

“amount of net contribution” (供款淨額), in relation to a Scheme member during a period, means the amount of contribution paid by the Scheme member during the period less the amount of rebate received by the Scheme member during that period;

“relevant period” (有關期間) means the period of 10 years immediately preceding the year in which the rebate is required to be made by the Board or the period since the commencement of this Schedule, whichever is the shorter.

9. Refund of contribution

(1) A proportion of the contribution paid by a Scheme member for the year in which it ceases to be a member of the Scheme shall be refunded to that Scheme member.

(2) The amount to be refunded is that proportion of the contribution that the number of days during which the Scheme member is not a member of the Scheme in that year bears to 365.

SCHEDULE 5

[s. 55]

CONSEQUENTIAL AND OTHER AMENDMENTS

Companies Ordinance**1. Preferential payments**

Section 265 of the Companies Ordinance (Cap. 32) is amended—

(a) in subsection (1)(db), by repealing everything after “, held” and substituting—
“deposits, to each depositor—

- (i) in respect of the deposits, or portion thereof, that the depositor holds in his own right, the aggregate amount so held on deposit, up to \$100,000, regardless of the number of deposits;
- (ii) in respect of the deposits, or portion thereof, that the depositor holds as a bare trustee for each of the beneficiaries, the aggregate amount so held on deposit, up to, subject to subsection (5J), \$100,000, regardless of the number of deposits so held for the beneficiary;
- (iii) in respect of the deposits, or portion thereof, that the depositor holds in a client account for each of the clients, the aggregate amount so held on deposit, up to, subject to subsection (5J), \$100,000, regardless of the number of deposits so held for the client; and
- (iv) in respect of the deposits, or portion thereof, that the depositor holds as a trustee (but not a bare trustee) under each of the trusts, the aggregate amount so held on deposit, up to \$100,000, regardless of the number of deposits so held under the trust;”;

(b) in subsection (5D)(a), by repealing “戶” and substituting “款人”;

(c) by repealing subsections (5E) and (5F) and substituting—

“(5E) If—

- (a) an arrangement has been entered into or carried out on or after the specified date in relation to a deposit with the company except where the arrangement is one in pursuance of a legally enforceable obligation incurred prior to that date;
- (b) the arrangement has, or would have had but for this subsection, the effect of enabling a person to become entitled to priority under subsection (1)(db), to which the person would otherwise not be entitled; and
- (c) it would be concluded, having regard to—
 - (i) the manner in which, and the circumstances under which, the arrangement was entered into or carried out;
 - (ii) the form and substance of the arrangement; and
 - (iii) the result in relation to the operation of this Ordinance that, but for this subsection, would have been achieved by the arrangement,

that the arrangement was entered into or carried out for the sole or dominant purpose of enabling the person, either alone or in conjunction with other persons, to become entitled to priority under subsection (1)(db), to which the person would otherwise not be entitled,
the priority given under subsection (1)(db) shall apply as if the arrangement or any part thereof had not been entered into or carried out.

(5F) Deposits given priority under subsection (1)(db) do not include—

- (a) a deposit held for the account of the Exchange Fund established by the Exchange Fund Ordinance (Cap. 66);

- (b) a deposit held by an excluded person in his own right, or, in the case of a deposit held by an excluded person and a non-excluded person in their own right (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person's share in the deposit;
- (c) a deposit held by a depositor as a bare trustee for an excluded person, or in a client account for an excluded person as the depositor's client, or, in the case of a deposit so held for an excluded person and a non-excluded person (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person's share in the deposit; and
- (d) a deposit held by a depositor as a trustee (but not a bare trustee) for an excluded person only.

(5G) For the purposes of subsection (5F)(b) and (c), if a deposit is held by more than one person in their own right or held for more than one person, each of those persons is deemed to have an equal share in the deposit unless the contrary is proved to the satisfaction of the liquidator or provisional liquidator.

(5H) For the purposes of paragraph (db) of subsection (1)—

- (a) if the depositor referred to in subparagraph (i) of that paragraph consists of 2 or more persons—
 - (i) in the case where the persons carry on business in partnership, those persons are, for the purpose of priority given under that paragraph, a single and continuing body of persons as distinct from the persons who may from time to time be the members of the partnership;
 - (ii) in any other case, each of those persons is deemed to have an equal share in the deposit, or the relevant portion thereof, unless the contrary is proved to the satisfaction of the liquidator or provisional liquidator;
- (b) if the beneficiary or client referred to in subparagraph (ii) or (iii) of that paragraph consists of 2 or more persons—
 - (i) in the case where the persons carry on business in partnership, those persons are, for the purpose of priority given under that paragraph, a single and continuing body of persons as distinct from the persons who may from time to time be the members of the partnership;
 - (ii) in any other case, each of those persons is deemed to have an equal share in the deposit, or the relevant portion thereof, unless the contrary is proved to the satisfaction of the liquidator or provisional liquidator; and
- (c) if the depositor referred to in subparagraph (iv) of that paragraph consists of 2 or more persons, those persons are, for the purpose of priority given under that paragraph, a single and continuing body of persons as distinct from the persons who may from time to time be the trustees.

(5I) If a deposit, or portion thereof, held by a depositor in a client account for a client is also held by the depositor as a trustee (whether a bare trustee or not) under a trust (whether a bare trust or not), the deposit or portion is, for the purposes of this section, taken as being held by the depositor for the client and not as such trustee.

(5J) If—

- (a) a person has more than one of the following capacities—
 - (i) a depositor holding one or more deposits, or portion thereof, in his own right;
 - (ii) a beneficiary for whom one or more deposits, or portion thereof, is or are held by a depositor as a bare trustee;

- (iii) a client for whom one or more deposits, or portion thereof, is or are held by a depositor in a client account; and
- (b) the aggregate of the amount that shall be paid in priority under subsection (1)(db)(i), (ii) or (iii) in respect of the relevant deposits or portions would, but for this subsection, have exceeded \$100,000,
- the amount that shall be paid in priority under subsection (1)(db)(ii) or (iii) shall abate in equal proportions among themselves so that the aggregate referred to in paragraph (b) shall be \$100,000.”;
- (d) in subsection (6)—
- (i) in the definition of “controller”—
- (A) by repealing “總監” and substituting “控權人”;
- (B) in the Chinese text, by repealing the full stop at the end and substituting a semicolon;
- (ii) in the definition of “deposit” and “depositor”, by repealing “戶” and substituting “款人”;
- (iii) by adding—
- “arrangement” (安排) includes an arrangement, transaction, operation or scheme whether or not such arrangement, transaction, operation or scheme is enforceable, or intended to be enforceable, by legal proceedings;
- “bare trustee” (被動受託人) has the same meaning as in the Deposit Protection Scheme Ordinance (7 of 2004);
- “chief executive” (行政總裁) has the same meaning as in the Banking Ordinance (Cap. 155);
- “client account” (客戶帳戶), in relation to a depositor, means an account maintained by the depositor with a bank for the purpose of holding money held by the depositor for a client of the depositor, whether or not other money may be held in the account;
- “excluded person” (豁除人士), in relation to a deposit maintained with the company being wound up, means—
- (a) a related company of the company;
- (b) an officer of the company being wound up or its related company on—
- (i) the date immediately preceding the date on which a Manager within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) is appointed in respect of the company being wound up under section 52 of that Ordinance; or
- (ii) the date on which the petition for the winding up of the company being wound up is presented, whichever is the earlier;
- (c) a multilateral development bank as defined in paragraph 1 of the Third Schedule to the Banking Ordinance (Cap. 155);
- (d) an authorized financial institution; or
- (e) a foreign bank;
- “foreign bank” (外地銀行) means a company that—
- (a) is incorporated outside Hong Kong;
- (b) is not an authorized financial institution; and
- (c) may, in or outside the place where it is incorporated, lawfully take deposits from the general public (whether or not on current account), or is authorized or recognized as a bank in that place;
- “non-excluded person” (非豁除人士) means a person who is not an excluded person;
- “officer” (人員), in relation to a company that is an authorized financial institution, means—
- (a) a director of the company;
- (b) a chief executive of the company;

- (c) a controller of the company; or
(d) a manager of the company;
- “related company” (關連公司), in relation to a company, means—
- (a) a subsidiary of the company;
(b) a holding company of the company; or
(c) a subsidiary of the holding company;
- “specified date” (指明日期), in relation to a company, means—
- (a) the date on which a Manager within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) is appointed in respect of the company under section 52 of that Ordinance; or
(b) the date on which the petition for the winding up of the company is presented,
whichever is the earlier;”.

Banking Ordinance

2. Official secrecy

Section 120 of the Banking Ordinance (Cap. 155) is amended—

- (a) in subsection (5), by adding after paragraph (g)—
“(gaa) to the disclosure of information by the Monetary Authority to the Hong Kong Deposit Protection Board established by section 3 of the Deposit Protection Scheme Ordinance (7 of 2004) for the purpose of enabling or assisting the Board to exercise its functions under that Ordinance;”;
- (b) in subsection (5C), by adding “, (gaa)” after “(fa)”.

3. Grounds for revocation of authorization

The Eighth Schedule is amended by adding—

- “21. The authorized institution has failed to comply with any requirement under the Deposit Protection Scheme Ordinance (7 of 2004) applicable to the institution.”.

Prevention of Bribery Ordinance

4. Public bodies

Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) is amended by adding—
“101. Hong Kong Deposit Protection Board.”.

Electronic Transactions Ordinance

5. Proceedings in relation to which sections 5, 6, 7 and 8 of this Ordinance do not apply under section 13(1) of this Ordinance

Schedule 2 to the Electronic Transactions Ordinance (Cap. 553) is amended—

- (a) in paragraph (zm), by repealing the full stop at the end and substituting a semicolon;
(b) by adding—
“(zn) the Deposit Protection Appeals Tribunal established by the Deposit Protection Scheme Ordinance (7 of 2004).”.

Securities and Futures Ordinance**6. Subrogation of recognized investor compensation company to rights, etc. of claimant on payment from compensation fund**

Section 87 of the Securities and Futures Ordinance (Cap. 571) is amended—

(a) in subsection (1)(a), by adding “subject to subsection (1A),” before “the company”;

(b) by adding—

“(1A) The company is not subrogated to any rights and remedies of the claimant in respect of compensation from the Deposit Protection Scheme Fund established by section 14 of the Deposit Protection Scheme Ordinance (7 of 2004).”.

7. Subrogation of the Commission to rights, etc. of claimant on payment from compensation fund

Section 243 is amended—

(a) in subsection (1)(a), by adding “subject to subsection (1A),” before “the Commission”;

(b) by adding—

“(1A) The Commission is not subrogated to any rights and remedies of the claimant in respect of compensation from the Deposit Protection Scheme Fund established by section 14 of the Deposit Protection Scheme Ordinance (7 of 2004).”.

8. Preservation of secrecy, etc.

Section 378(2) is amended by adding—

“(ea) the disclosure of information to the Hong Kong Deposit Protection Board established by section 3 of the Deposit Protection Scheme Ordinance (7 of 2004) for the purpose of enabling or assisting the Board to perform its functions under section 5(a), (d) and (e) of that Ordinance;”.

Securities and Futures (Investor Compensation—Claims) Rules**9. Making a claim for compensation**

Section 4 of the Securities and Futures (Investor Compensation—Claims) Rules (L.N. 215 of 2002) is amended—

(a) in subsection (1), by repealing “Where” and substituting “Subject to subsection (1A), where”;

(b) by adding—

“(1A) A qualifying client of a specified person shall not claim compensation from the compensation fund in respect of any loss in respect of which he has been paid an amount of compensation from the Deposit Protection Scheme Fund established by section 14 of the Deposit Protection Scheme Ordinance (7 of 2004).”.