



HONG KONG MONETARY AUTHORITY
香港金融管理局

**Consultation Paper on
Proposed Enhancements
to the Banking Ordinance (Cap. 155)**

5 December 2024

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Annex Consultation Questions

I. Foreword

1. This consultation paper sets out certain proposals to amend the Banking Ordinance (Cap. 155) (BO), following a review of the BO conducted by the Hong Kong Monetary Authority (HKMA), along with proposals to amend two other ordinances which have particular relevance for the banking sector, namely the Financial Institutions (Resolution) Ordinance (Cap. 628) (FIRO) and the Hong Kong Association of Banks Ordinance (Cap. 364) (HKABO).
2. A full list of the consultation questions can be found at **Annex**.
3. Members of the public are invited to submit written comments, and/or written responses to the consultation questions, on or before 28 January 2025 through any of the following channels:

By mail to: **Banking Review and Development Unit**
Hong Kong Monetary Authority
55/F, Two International Finance Centre
8 Finance Street
Central, Hong Kong

By e-mail to: bo_review_consult@hkma.gov.hk

4. Persons submitting comments on behalf of an organisation should provide details of the organisation whose views they represent.
5. Please note that the names of commentators and the contents of their submissions may be published by the HKMA on the website and/or in other documents to be published by the HKMA. Please read the Personal Information Collection Statement in the following section for details.
6. If you do not wish your name or submission to be published by the HKMA, please indicate so when you make your submission.

II. Personal Information Collection Statement

7. This Personal Information Collection Statement (PICS) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data¹ will be used following collection, what you are agreeing to with respect to the HKMA's use of your Personal Data, and your rights under the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO).

Purpose of Collection

8. The personal data provided in your submission in response to this consultation paper may be used by the HKMA for one or more of the following purposes –
- to administer the provisions of the Banking Ordinance (Cap. 155) and guidelines published pursuant to the powers vested in the Monetary Authority;
 - to perform statutory functions under the provisions of the Banking Ordinance (Cap. 155);
 - for research and statistical purposes; or
 - for other purposes permitted by law.

Transfer of Personal Data

9. Personal data may be disclosed by the HKMA to members of the public in Hong Kong and elsewhere as part of this consultation. The names of persons who submitted comments on this consultation paper, together with the whole or any part of their submissions, may be disclosed to members of the public. This will be done by publishing this information on the HKMA website and/or in documents to be published by the HKMA during the consultation period or at its conclusion.

¹ Personal data means personal information as defined in the Personal Data (Privacy) Ordinance (Cap. 486).

Access to Data

10. You have the right to request access to and correction of your personal data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your personal data provided in your submission on this consultation paper. The HKMA has the right to charge a reasonable fee for processing any data access request.

Retention

11. Personal data provided to the HKMA in response to this consultation paper will be retained for such period as may be necessary for the proper discharge of its functions.

Enquiries

12. Any enquiries regarding the personal data provided in your submission on this consultation paper, requests for access to personal data or correction of personal data should be addressed in writing to –

Personal Data Privacy Officer
Hong Kong Monetary Authority
55/F, Two International Finance Centre
8 Finance Street
Central, Hong Kong

III. Executive Summary

13. The Banking Ordinance (Cap. 155) (BO), which provides the legal framework for banking regulation and supervision in Hong Kong, has always been subject to regular reviews and amendments since it was revamped and enacted in 1986.
14. While the Hong Kong banking system is robust, resilient and well regulated, it is important to review and assess the framework from time to time, so as to enable the Monetary Authority² (MA) to effectively discharge his functions under the BO, especially in promoting the general stability and effective working of the banking system. This is particularly important in the face of rapid developments in the banking sector and the evolving domestic and international regulatory and supervisory landscape.
15. Against this backdrop, the HKMA has recently conducted a review of the BO. The purpose of the BO review is to:
 - (a) reflect developments in banking industry practices, and regulatory and supervisory approaches, both globally and domestically;
 - (b) address specific issues identified from Hong Kong's supervisory experience in the past; and
 - (c) continue the process of aligning the system of regulation in Hong Kong with that of other major financial centres.
16. The BO review focuses specifically on a number of priority areas where amendments and enhancements to the BO are considered timely and necessary. The aim is to enable the MA and the Hong Kong banking industry to better meet risks and challenges in times ahead.
17. Certain proposals to amend the BO have already been consulted with the public as part of the BO review³. This consultation paper sets out the HKMA's enhancement proposals to the BO in the following areas:
 - A. establishing a statutory regime for the MA to exercise direct regulatory and supervisory powers over designated locally incorporated holding companies of locally incorporated authorized institutions (AIs);
 - B. allowing flexibility for the MA to engage skilled persons on a case-by-case basis, where appropriate, for assisting the MA in the performance of his functions under the BO; and

² Legally, the MA is an individual appointed by the Financial Secretary under section 5A of the Exchange Fund Ordinance. The powers under the Banking Ordinance are personally vested in the MA. In practice, the MA heads an Office known as the "Hong Kong Monetary Authority" of which he is the Chief Executive.

³ See paragraph 25 for details.

- C. introducing a number of technical amendments for addressing operational issues, streamlining the regulatory and supervisory processes, reducing compliance burdens faced by AIs, continuing the process of aligning the system of regulation in Hong Kong with that of other major financial centres, and to better reflect the policy intent.
18. This consultation paper also includes proposed amendments to two other ordinances which have particular relevance for the banking sector, namely the Financial Institutions (Resolution) Ordinance (Cap. 628) (FIRO) and the Hong Kong Association of Banks Ordinance (Cap. 364) (HKABO). The former entails a proposed amendment to include an express reference to the “public interest” in the conditions for initiating resolution of a “within scope financial institution” (which includes all AIs). The latter entails proposed amendments to HKABO that intend to (i) streamline the process for varying the composition of elected members of the Consultative Council of the Hong Kong Association of Banks (HKAB); and (ii) facilitate HKAB’s holding of meetings by using virtual meeting technology.
19. The HKMA would like to invite comments from the public on the above proposals. Subject to the outcome of the consultation, the HKMA will take into account the comments received and may propose relevant legislative amendments.

IV. Background

20. The MA is charged with the principal function of promoting the general stability and effective working of the banking system under the BO. As part of his statutory functions under the BO, the MA is responsible for considering and proposing reforms of the law relating to banking business and the business of taking deposits.
21. In recent years, a number of legislative amendments to the BO (and the relevant rules) were effected to ensure the regulatory framework in Hong Kong remains in line with international standards, particularly those issued by the Basel Committee on Banking Supervision (BCBS)⁴.
22. While the Hong Kong banking system is robust, resilient and well regulated, it is important to review and assess the framework from time to time, so as to enable the MA to effectively discharge his functions under the BO, especially in promoting the general stability and effective working of the banking system. This is particularly important in the face of rapid developments in the banking sector and the evolving domestic and international regulatory and supervisory landscape.
23. Against this backdrop, the HKMA has recently conducted a review of the BO with the following purposes:
 - (a) reflect developments in banking industry practices, and regulatory and supervisory approaches, both globally and domestically;
 - (b) address specific issues identified from the Hong Kong's supervisory experience in the past; and
 - (c) continue the process of aligning the system of regulation in Hong Kong with that of other major financial centres.
24. The BO review focuses specifically on a number of priority areas where amendments and enhancements to the BO are considered timely and necessary. The aim is to enable the MA and the Hong Kong banking industry to better meet risks and challenges in times ahead. The potential enhancements to the BO include:
 - (a) simplification of the three-tier banking system into two-tier;
 - (b) allowing sharing of information among AIs on customers, accounts and transactions for the purpose of preventing and detecting financial crime;
 - (c) establishing a statutory regime for the MA to exercise direct regulatory and supervisory powers over designated locally incorporated holding

⁴ Hong Kong has been a member of the BCBS since June 2009.

companies of locally incorporated AIs;

- (d) extending the MA's enforcement powers, for better enabling the MA to deal with a range of potential "misconduct" and "fitness and propriety" issues, in a more tailored and proportionate manner⁵;
 - (e) allowing flexibility for the MA to engage skilled persons on a case-by-case basis, where appropriate, for assisting the MA in the performance of his functions under the BO; and
 - (f) introducing a number of technical amendments, for addressing operational issues, streamlining the regulatory and supervisory processes, reducing compliance burdens faced by AIs, continuing the process of aligning the system of regulation in Hong Kong with that of other major financial centres and to better reflect the policy intent.
25. The HKMA has conducted public consultations on enhancement proposals for two of the above BO review areas, in relation to simplification of the three-tier banking system into two-tier⁶ and information sharing among AIs on customers, accounts and transactions for the purpose of preventing and detecting financial crime⁷. Relevant consultation conclusions were published on 5 August 2024⁸ and 30 September 2024⁹, respectively.
26. This consultation paper sets out the HKMA's enhancement proposals in three other aspects, in relation to: establishing a statutory regime for the regulation and supervision of designated locally incorporated holding companies of locally incorporated AIs; allowing flexibility for the MA to engage skilled persons for assisting the MA in the performance of his functions under the BO; and introducing a number of technical amendments.
27. This consultation paper also includes proposed amendments to two other ordinances which have particular relevance for the banking sector, namely the Financial Institutions (Resolution) Ordinance (Cap. 628) (FIRO) and the Hong Kong Association of Banks Ordinance (Cap. 364) (HKABO).

⁵ The HKMA is reviewing the MA's enforcement powers and an industry consultation is being conducted.

⁶ See <https://www.hkma.gov.hk/eng/news-and-media/press-releases/2023/06/20230626-4/>

⁷ See <https://www.hkma.gov.hk/eng/news-and-media/press-releases/2024/01/20240123-4/>

⁸ See <https://www.hkma.gov.hk/eng/news-and-media/press-releases/2024/08/20240805-5/>

⁹ See <https://www.hkma.gov.hk/eng/news-and-media/press-releases/2024/09/20240930-4/>

V. Proposals

A. Establishing a statutory regime for the regulation and supervision of bank holding companies

28. It is proposed that a statutory regime be established to enable the MA to exercise direct regulatory and supervisory powers over designated locally incorporated holding companies¹⁰ of locally incorporated AIs.
29. Specifically, it is proposed that the powers to be conferred upon the MA under the statutory regime shall include:
- (a) powers to require a locally incorporated AI to be held by a locally incorporated immediate holding company (IHC), and if necessary, require the controller of the AI to establish a new locally incorporated IHC, including for the sole purpose of holding the AI;
 - (b) powers to designate one or more locally incorporated holding company(ies) of a locally incorporated AI, for the MA to exercise relevant direct regulatory and supervisory powers; and
 - (c) powers to require the designated locally incorporated holding company(ies) of a locally incorporated AI to observe prudential standards and/or other supervisory requirements, for ensuring the holding company(ies) as controller(s), (together with other relevant companies within the group), act as a source of support and not a source of weakness to the AI.

Justifications

30. The BCBS issues the Core Principles for Effective Banking Supervision (Core Principles), which are the de facto minimum standards for the sound prudential regulation and supervision of banks and banking systems. One of the Core Principles is on consolidated supervision (CP #12), which states that “The supervisor supervises the banking group on a consolidated basis, adequately monitoring and, as appropriate, applying prudential standards to all aspects of the business conducted by the banking group worldwide”.
31. In line with the Core Principles, the MA adopts a group-wide approach to the supervision of locally incorporated AIs¹¹, which takes into account the

¹⁰ Under the BO, **holding company** (控權公司), in relation to a body corporate, has the meaning given by section 13 of the Companies Ordinance (Cap. 622).

¹¹ For AIs incorporated outside Hong Kong, they must be a bank which, in the opinion of the MA, is adequately supervised by the relevant banking supervisory authority, usually the home supervisor in the place where the bank is incorporated. In this context, a “bank” is as defined in

consolidated risks of the AI's banking group (including its downstream operations), and the risks posed by other (financial or non-financial) group companies, where the AI or its banking group forms part of a wider banking, financial or commercial group, that is ultimately headed by a common holding company.

32. For locally incorporated AIs where the AI and its subsidiaries form part of a group, which is headed by a bank or a holding company under the supervision of a financial regulator outside Hong Kong, the MA would generally seek to rely as far as prudentially possible on the assessment of as well as supervisory cooperation with the home supervisors in line with the Core Principle on home-host relationships (CP #13).
33. In cases where none of the holding companies (including the ultimate holding company (UHC) and any intermediate holding companies (ITHCs)) of a locally incorporated AI are under the consolidated supervision of the MA or any financial regulators whose scope and nature of supervision satisfy the MA, the MA would generally require the AI to be held by a locally incorporated IHC.
34. The MA, however, does not have direct regulatory or supervisory powers over a holding company of AI under the BO. As a result, the MA has to rely on powers to require its "fitness and propriety" as a controller of the AI on a continuing basis for imposing certain prudential and other supervisory requirements on the relevant holding companies, via conditions attached to shareholder controllers under section 70 of the BO. This is not the most transparent way of setting the regulatory and supervisory standards on relevant holding companies. We consider that there is room for improvement and to bring the BO further into line with the best practices of major overseas financial centres.
35. Moreover, a potential issue with relying on section 70 of the BO to impose prudential and other supervisory requirements on a holding company in order to achieve consolidated supervision is that, the section does not provide for an adequate set of implementation tools. The MA currently only has limited tools in dealing with failures to comply with the conditions attached under section 70 other than serving a notice of objection (to a shareholder controller of the AI) which may not be proportionate to the seriousness of the non-compliance.
36. As such, we consider there are merits in establishing a statutory regime for the MA to exercise direct regulatory and supervisory powers over relevant locally incorporated holding companies of locally incorporated AIs.
37. The proposal will provide a specific framework for direct regulation and supervision of designated holding companies which will enhance transparency of regulatory and supervisory standards on relevant holding

section 46(9) of the BO, i.e. a company which either is authorized or recognised as a bank in the place where it is incorporated; or may, whether or not in or outside the place where it is incorporated, lawfully take deposits from the general public, whether or not on current accounts.

companies, and bring the BO further into line with international standards (CP #12) and best practices of other major overseas financial centres on consolidated supervision.

38. For the avoidance of doubts, it should be emphasized that it is neither the MA's policy intention to require every locally incorporated AI to establish a locally incorporated IHC as a general requirement, nor to alter the current supervisory practices of relying on as far as prudentially possible, and cooperating with the relevant home regulators of the parent bank or holding company of the locally incorporated AI.
39. Under our proposal, in the MA's determination of whether to exercise the proposed powers i.e. to require a locally incorporated AI to be held under a locally incorporated IHC (including requirement for the AI to establish a new IHC if deemed necessary), and/or to designate and impose requirements on a locally incorporated holding company of a locally incorporated AI, it is proposed that the MA would take into consideration, inter alia, the following factors:
 - (a) whether the MA or any other financial regulators supervises any, and including that particular, holding company of the AI and if so, the scope and nature of such supervision exercised by those regulators;
 - (b) the degree of influence or control the holding company of the AI exerts on the policy and management of the AI;
 - (c) materiality of the banking business of the AI in relation to its group and/or the Hong Kong banking sector;
 - (d) the size and nature of any non-banking business of the AI's group, and whether such business may pose a material risk and/or impact on the safety and soundness of the AI itself or the banking group; and
 - (e) any other criteria promulgated by an international standard setting body (including the BCBS) that the MA may consider relevant.
40. It is proposed that a designated locally incorporated holding company (together with other relevant companies within the group) could be subject to a set of requirements, which include any one or more of the following:
 - (a) prudential and other supervisory requirements, such as those on capital adequacy, liquidity, large exposures, exposures to connected parties or charges over assets;
 - (b) having an effective plan to support the capital adequacy and liquidity of the AI in case of need and implementing such plan as necessary or as required by the MA;
 - (c) not engaging in business activities detrimental to the AI, or that the MA's prior consent is required before engaging in certain activities;

- (d) the fitness and propriety of its chief executive and directors as well as the exercise of effective corporate governance;
- (e) a range of inspection, intermediate disciplinary¹² and intervention powers by the MA;
- (f) reports to be prepared and submitted by auditors or skilled persons (including those being proposed in this paper, see proposal B below); and
- (g) submission and/or publication of relevant financial and other information (e.g. banking returns, audited accounts, notifications on matters of concerns, etc.) as needed.

41. The above requirements largely resemble the conditions the MA currently imposes on relevant controllers under section 70 of the BO.

Consultation questions:

Question 1: Do you agree that there are merits in establishing a statutory regime for the regulation and supervision of locally incorporated holding companies of locally incorporated AIs?

Question 2: Do you have any comments on the proposed powers to be conferred upon the MA, and the proposed factors to be considered when the MA decides whether to exercise the proposed powers?

Question 3: Do you have any comments on the proposed set of requirements that a designated locally incorporated holding company could be subject to?

¹² See footnote 5.

B. Allowing flexibility for the Monetary Authority to engage skilled persons

42. It is proposed to allow flexibility for the MA to engage skilled persons on a case-by-case basis, where appropriate, for assisting the MA in the performance of his functions under the BO.
43. Specifically, it is proposed that the MA will be able to:
- (a) appoint one or more skilled person(s) to assist the MA in the performance of his functions under the BO; and
 - (b) appoint, or require an AI to appoint, one or more skilled person(s) to prepare and submit to the MA, a report on such matters relating to an AI, as the MA may reasonably require for the exercise of his functions under the BO.
44. In relation to the above proposal, it is also proposed to:
- (a) amend section 59(2) of the BO to provide that the MA may directly appoint (in addition to requiring an AI to appoint) auditor(s) to prepare and submit a report to him on such matters relating to an AI, as the MA may reasonably require for the exercise of his functions under the BO; and
 - (b) provide any skilled person(s) and auditor(s) appointed by the MA under the above proposals, to be subject to the official secrecy provisions under section 120 of the BO, and covered by the statutory immunity under section 127 of the BO, which already applies to the MA and his staff at present in the discharge of the MA's functions under the BO.

Justifications

45. In view of the complexity and technicality of AIs' operations which have increased in recent years due to a number of factors including digitalisation and the adoption of Fintech, under certain circumstances, there is a need for the MA to appoint skilled persons who possess the relevant and appropriate skillsets and resources, to assist the MA in the performance of his functions under the BO. This is important as it may not be realistic for the MA to acquire and maintain all necessary expertise in-house given limited resources.
46. The proposal to confer upon the MA powers to engage skilled persons would: (i) equip the MA with the necessary tools to more effectively discharge his regulatory and supervisory functions under the BO, and (ii) bring the BO further into line with international practices and the Core

Principles¹³ issued by the BCBS.

47. In proposing the above, the MA is not intended to outsource any part of the MA's supervisory functions through the appointment of a skilled person(s). It should be highlighted that the MA's supervisory responsibilities under the BO will always remain vested in and be performed by the MA. Any appointment of a skilled person(s) by the MA will only be for the sole purpose of assisting the MA in the performance of his functions under the BO.
48. While skilled person(s) may not necessarily be an auditor nor be governed by any professional bodies, assurance standards or code of ethics, when appointing, or requiring an AI to appoint, a skilled person(s), the MA and/or the AI will have to be satisfied that the skilled person(s) possesses the necessary skills, qualifications, experience, competency, resources and is suitable for the appointment to perform independently and objectively in relation to the AI, having regard to the circumstances.
49. In respect of an appointment of a skilled person(s) to be made by an AI pursuant to a requirement by the MA, it is also proposed that the skilled person(s) must be either nominated or approved by the MA.
50. Meanwhile, the proposals to:
 - (a) amend section 59(2) to enable the MA to directly appoint (in addition to requiring an AI to appoint) an auditor(s) to prepare and submit a report to the MA on such matters relating to an AI would provide further flexibility for the MA, where such report to be prepared and submitted by an auditor(s) may involve possible adverse findings in respect of the AI and the auditor(s) can account to the MA in a more direct manner; and
 - (b) subject the skilled person(s) and auditor(s) appointed by the MA to the official secrecy provisions in section 120, and confer upon them the statutory immunity under section 127 would be both important and necessary to enable the skilled person(s) and auditor(s) appointed, to more effectively assist the MA in the performance of his functions under the BO.

¹³ Relevant Core Principles include: CP #2 - Essential Criteria (EC) 6 and CP #9 - EC11.
https://www.bis.org/basel_framework/standard/BCP.htm

Consultation questions:

- Question 4: Do you agree that the MA should be allowed flexibility to engage skilled persons, where appropriate and on a case-by-case basis, for the purpose of assisting the MA in the performance of his functions under the BO?
- Question 5: Do you have any comments on the proposal to amend section 59(2) to empower the MA to directly appoint an auditor(s)?
- Question 6: Do you have any comments on subjecting the skilled person(s) and auditor(s) appointed by the MA to the official secrecy provisions under section 120 and extending the statutory immunity under section 127 to them?

C. Introducing a number of technical amendments

51. It is proposed to introduce a number of technical amendments, for (i) addressing operational issues identified from Hong Kong's supervisory experience over the years to help streamline regulatory and supervisory processes, and thereby reduce the compliance burdens faced by AIs; (ii) continuing the process of aligning the system of regulation in Hong Kong with that of other major financial centres; and (iii) making textual amendments to certain existing provisions under the BO to better reflect the policy intent.
52. The proposed technical amendments include:
- 1. Items for addressing operational issues identified from supervisory experience*
- (a) amending sections 59(1) and 60(5), to allow flexibility for an AI incorporated outside Hong Kong to decide whether to submit the necessary documents in the manner as currently specified under section 60(5) to the MA, or to comply with section 59(1) which requires the AI to comply with the Companies Ordinance (Cap. 622) with respect to the audit of a company's accounts;
 - (b) amending section 68 to expand its range to provide that non-Hong Kong supervisory authorities that oversee other financial activities apart from banking may, with the approval of the MA, conduct examinations on relevant AIs in the manner as currently specified;
 - (c) amending section 72A to confer upon the MA powers to require a prospective relevant individual (Rel) to submit information to the MA as the MA may reasonably require for the exercise of his functions under the BO. A prospective Rel is an individual in respect of whom the AI has submitted specified particulars to the MA for the purpose of inclusion into the register maintained under section 20(1)(ea) of the BO, but whose particulars have not yet been so registered;
 - (d) amending section 73 to impose a time limit of the prohibition from acting as employees of AI (proposed to be 7 years) to enhance the practical operation of the provision, which should also have the effect of alleviating the burden on relevant employees of AIs. In addition, it is also proposed to make the prohibition applicable in the case of the resolution of an AI in addition to revocation and winding-up;
 - (e) amending section 74 to allow the MA to temporarily exempt an AI from section 74(1) regarding the appointment of a chief executive of an AI, if in his opinion such exemption is not likely to be detrimental to the interests of depositors (including potential depositors) of the AI. The aim is to provide adequate flexibility to the AI when there are circumstances beyond the AI's control;

II. Items for aligning the system of regulation in Hong Kong with that of other major financial centres

- (f) amending the definition of “indirect controller” under section 2 to include (i) any person who the directors are accustomed or under an obligation to act in accordance with his “wishes” as well as his “directions or instructions”, whether formal or informal, or (ii) any person, not being a director of the company or a person employed in the management of the company, who is in a position to exercise significant influence over the management of the company;
- (g) amending sections 7(3), 16(10), 82(1), 92(6), 97M and 118C(7) to provide that the MA may publish guidelines under each of the aforementioned sections, by notice in the Gazette or in some publication determined by the MA. The proposed amendments would enable the MA to adopt the most appropriate mean(s) for publishing guidelines on a case-by-case basis;
- (h) adding a provision to require that an AI must be satisfied that an auditor(s) it appoints under sections 50(1)(c), 59(2), 63(3) or 63(3A) has the qualifications, skills, experience and resources necessary to perform the requisite duties independently; and that the AI shall take all reasonable steps to ensure the auditor(s) appointed provides information to the MA upon request, regarding the auditor’s qualifications, skills, experience, resources and independence;
- (i) amending sections 50, 59, and 63 to provide the MA with the powers to withdraw his prior approval of an appointment of an external auditor under sections 50(2A), 59(3) and 63(3B) or to require an AI to terminate or discontinue the appointment of such auditor, if he deems the appointment inappropriate having regard to the circumstances;
- (j) amending section 66 to require an AI to notify the MA as soon as practicable when the AI intends to cease to carry on the relevant business (i.e. notification should be made in advance of the cessation). Separately, a new provision is proposed to require an AI to notify the MA of any material adverse developments. These proposed amendments seek to bring the provision further in line with the Core Principles;
- (k) adding a new provision to confer upon the MA the power to exempt the following persons from applying to become controllers in respect of the shares of an AI: (i) HKSCC Nominees Limited for the holding of shares for clearing purposes, (ii) any other company which appears to the MA to perform similar functions to those of HKSCC Nominees Limited or Hong Kong Securities Clearing Company Limited, (iii) a custodian or a nominee provided that they do not have discretion to exercise voting powers, or (iv) any entity specified by the MA. The MA may attach conditions for such exemption and will be conferred upon the power to require information provision from the exempted person. The aim is to allow the MA to exempt persons holding the shares of an AI but do not

have discretion in exercising voting power and can only vote in accordance with written instructions from the actual (beneficial) owners of the shares, as they are not what the shareholder controller regime is primarily concerned;

III. Items of textual amendments to better reflect the policy intent

- (l) amending or repealing certain terms and references under section 2, such as repealing the definition of “money at call” that is no longer needed, and amending the definition of “working day” to exclude Saturday and a black rainstorm warning day to better reflect policy intent. Similarly, the definition of “business day” in section 20(10) would be amended to exclude Saturday for consistency;
- (m) amending the definition of “money broker” under section 2(1) to specify the relevant markets in relation to the agreements negotiated, arranged or facilitated by a money broker shall be “wholesale treasury markets”;
- (n) amending section 63 to enable the MA to exempt an AI from submitting returns before commencement of its business, to better reflect the policy intent. The reference to the “last business day” in section 63(1)(a) and (b) is proposed to be removed to avoid practical difficulties or confusion with the “last day” therein;
- (o) amending section 69 to explicitly require that a locally incorporated AI will need to seek the MA’s prior approval before an amalgamation with another company, and notify the MA after an amalgamation has taken place, to put the matter beyond doubt;
- (p) amending section 121(2) by replacing the expression “appropriate recognized banking supervisory authority” with “relevant banking supervisory authority” making use of the definition currently in section 2(9) of the BO, as a textual alignment;
- (q) amending section 133 to expressly allow the MA to decide whether to accept electronic signatures (rather than digital signatures), when there is no express requirement to sign under the BO. The definition of “electronic signature” will follow that in the Electronic Transactions Ordinance (Cap. 553);
- (r) amending section 134(1) and (2), to include electronic mail as a valid manner of service notice on an AI under the BO; and
- (s) amending section 134B(1)(a) to replace the reference to “Hong Kong Foreign Exchange & Deposit Brokers’ Association” with “Hong Kong Inter-Dealer Brokers Association”.

IV. Proposed amendments to The Hong Kong Association of Banks Ordinance (Cap. 364) and The Hong Kong Association of Banks By-laws (Cap. 364A)

53. In addition to the above proposed technical amendments to the BO, having consulted the Financial Services and the Treasury Bureau and The Hong Kong Association of Banks (HKAB), it is proposed that amendments be introduced to The Hong Kong Association of Banks Ordinance (Cap. 364) (HKABO) and The Hong Kong Association of Banks By-laws (Cap. 364A) (HKAB By-laws) for (i) streamlining the process for varying the composition of elected members of the Consultative Council of HKAB; and (ii) facilitating HKAB's holding of meetings by using virtual meeting technology.
54. The proposed amendments include:
- (a) amending section 9 of the HKABO, removing Schedule 1 from the HKABO and amending the HKAB By-laws to the effect that varying the composition of elected members of the Consultative Council of HKAB will be determined by HKAB and shall take effect upon the approval of the Government. The aim is to streamline the process for varying the composition of elected members of the Consultative Council of HKAB and thus enhance efficiency and flexibility to cope with addition or withdrawal of member banks of HKAB from new or existing jurisdictions and make necessary adjustments. There is similar practice adopted overseas.
 - (b) amending the HKABO and HKAB By-laws to the effect that HKAB's meetings (including general meetings and meetings of HKAB's Committee and Consultative Council) can be held using virtual meeting technology for greater flexibility and efficiency under the digital era.

Consultation questions:

Question 7: Do you agree with or have any comments on the list of technical amendments to the BO?

Question 8: Do you agree with or have any comments on the proposed amendments to the HKABO and HKAB By-laws?

D. Inclusion of an express reference to the “public interest” in the conditions for initiating resolution of a “within scope financial institution”

55. The MA proposes to amend one of the existing conditions, namely condition 3 in section 25(4) of the Financial Institutions (Resolution) Ordinance (Cap. 628) (FIRO), for triggering the resolution of a “within scope financial institution” (WSFI)¹⁴. The proposed amendment would add an express reference to the “public interest” as an alternative condition to the existing condition 3. The alternative condition (along with the other two conditions respectively in section 25(2) and (3) of the FIRO), if satisfied, can trigger the resolution of a WSFI.
56. In formulating the proposed amendment, the MA has coordinated with the Insurance Authority (IA) and the Securities and Futures Commission (SFC), the other two sectoral resolution authorities alongside the MA under the FIRO, and has drawn reference from the equivalent condition in other major financial jurisdictions, such as the EU, the UK and Singapore.

Justifications

57. Currently, resolution of a WSFI may only be initiated if a resolution authority is satisfied that all of the three conditions set out under section 25 of the FIRO are met. These conditions are:
- Condition 1: a WSFI has ceased, or is likely to cease, to be viable,
- Condition 2: there is no reasonable prospect that private sector action (outside of resolution) would result in the WSFI again becoming viable within a reasonable period, and
- Condition 3: the non-viability of the WSFI poses risks to the stability and effective working of the financial system of Hong Kong, including to the continued performance of critical financial functions; and resolution will avoid or mitigate those risks.
58. Condition 3 in section 25(4) appears to be more restrictive than it is the case in other major financial jurisdictions. It is noted that the equivalent condition in the EU, the UK and Singapore all contain an express reference to the “public interest”.
59. The proposed amendment will enhance the flexibility of the resolution authorities in handling various crisis scenarios. This will also better align with the equivalent condition in other major financial jurisdictions.

¹⁴ Under section 2(1) of the FIRO, **within scope financial institution** (受涵蓋金融機構) means: (a) a banking sector entity; (b) an insurance sector entity; or (c) a securities and futures sector entity. Each of the above terms is further defined in section 2(1) of the FIRO.

Consistency in terms of the conditions for initiating resolution will be important and conducive to the harmonisation of resolution regimes on an international level, which should create more efficient outcomes, particularly in the resolution of a cross-border financial institution.

Consultation question:

Question 9: Do you agree with the proposal to include an express reference to the “public interest” in the conditions for initiating resolution of a “within scope financial institution” so as to enhance the flexibility of resolution authorities in handling various crisis scenarios and better align with the equivalent condition in other major financial jurisdictions?

VI. Way Forward

60. The HKMA is consulting on the enhancement proposals set out in this consultation paper. Members of the public are invited to submit comments by 28 January 2025. Subject to the outcome of the consultation, the HKMA may propose legislative amendments, taking into account responses to the consultation.

Annex Consultation Questions

A. Establishing a statutory regime for the regulation and supervision of bank holding companies

1. Do you agree that there are merits in establishing a statutory regime for the regulation and supervision of locally incorporated holding companies of locally incorporated AIs?
2. Do you have any comments on the proposed powers to be conferred upon the MA, and the proposed factors to be considered when the MA decides whether to exercise the proposed powers?
3. Do you have any comments on the proposed set of requirements that a designated locally incorporated holding company could be subject to?

B. Allowing flexibility for the Monetary Authority to engage skilled persons

4. Do you agree that the MA should be allowed flexibility to engage skilled persons, where appropriate and on a case-by-case basis, for the purpose of assisting the MA in the performance of his functions under the BO?
5. Do you have any comments on the proposal to amend section 59(2) to empower the MA to directly appoint an auditor(s)?
6. Do you have any comments on subjecting the skilled person(s) and auditor(s) appointed by the MA to the official secrecy provisions under section 120 and extending the statutory immunity under section 127 to them?

C. Introducing a number of technical amendments

7. Do you agree with or have any comments on the list of technical amendments to the BO?
8. Do you agree with or have any comments on the proposed amendments to the HKABO and HKAB By-laws?

