



HONG KONG MONETARY AUTHORITY  
香港金融管理局

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

13 February 2026

## 1. Introduction

- 1.1 The Hong Kong Monetary Authority (“HKMA”) issued a consultation paper on 5 December 2024, outlining a range of proposed amendments to the Banking Ordinance (Cap. 155) (“BO”), Financial Institutions (Resolution) Ordinance (Cap. 628) (“FIRO”), The Hong Kong Association of Banks Ordinance (Cap. 364) (“HKABO”) and The Hong Kong Association of Banks By-laws (Cap. 364A) (“HKAB By-laws”).
- 1.2 The consultation ended on 28 January 2025. A total of six submissions were received from three industry associations, one statutory body, one law firm, and one member of the public. The HKMA subsequently engaged with the banking industry further on the proposed amendments.
- 1.3 This consultation conclusions paper summarises the key feedback received, the HKMA’s responses thereto, and the next steps. This document should be read in conjunction with the consultation paper.

## 2. Key feedback received and HKMA's responses

### 2.1 Statutory regime for regulation and supervision of bank holding companies

#### 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 authorized institutions ("AIs")?

Question 2: Do you have any comments on the proposed powers to be conferred upon the Monetary Authority ("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?

2.1.1 Recognising that it would further benefit the banking industry in promoting long-term stability and confidence, the respondents generally expressed support for the proposal to establish a statutory regime for the regulation and supervision of bank holding companies. The proposal primarily seeks to codify in the BO the existing practice as outlined in the non-statutory guidelines in the HKMA's Supervisory Policy Manual ("SPM") module CS-1 "Group-wide Approach to Supervision of Locally Incorporated Authorized Institutions" ("SPM CS-1").

2.1.2 Some respondents sought to clarify the scope of application, including whether and how the framework would apply to cases where the ultimate holding company is already regulated (and thus subject to consolidated supervision) by an overseas home supervisor, or the group contains subsidiaries that are subject to regulatory supervision whilst the non-regulated subsidiaries are non-material. Clarification was also requested on the phrase "together with other relevant companies within the group" in paragraph 40 of the consultation paper.

2.1.3 In this regard, it is clarified that, under the proposed framework:

- (i) only a locally incorporated AI's locally incorporated holding company would have the potential to be designated by the MA as a designated bank holding company ("DBHC") and hence be subject to the relevant BO provisions to be introduced;
- (ii) in general, the MA will consider designating a holding company of an AI if the holding company is not under the direct or consolidated supervision of the MA or any other financial authority (either local or overseas). This refers to a holding company that belongs to a Type 3 group structure as described in the existing SPM CS-1. In other words, it is not the intention to designate a holding company as a DBHC if it is already adequately supervised by a local or overseas financial authority, unless circumstances warrant otherwise (e.g. the home (or primary) supervisor does not exercise consolidated supervision or it wishes to defer to the MA to supervise such holding company in Hong Kong);
- (iii) the primary objective is to ensure that such an unregulated holding company, which may have significant influence on the AI concerned, acts as a source of support rather than a significant risk to the AI. Hence, whether the subsidiaries of the holding company are already regulated by other domestic authorities or engaging in non-material activities is therefore of secondary consideration; and
- (iv) any prudential and other supervisory requirements are imposed on the DBHC, but not on other relevant companies (e.g. the DBHC's subsidiaries, whether incorporated in or outside Hong Kong) within the group. That said, for any prudential requirements that may be applicable to a DBHC on a consolidated basis, the positions of other relevant companies within the consolidated group will have to be taken into account in the relevant calculations. For example, it may be considered necessary for a DBHC (which is holding an AI and other subsidiaries at the same time) to observe a certain capital ratio on a consolidated basis, and in that case it will be the DBHC that has to ensure adequate resources are maintained at the DBHC (and/or at the AI which is subject to similar requirement) for meeting the required consolidated capital ratio. This approach is consistent with existing practices (where requirements are imposed via section 70 conditions for relevant cases).

- 2.1.4 There was a suggestion that the AI's recovery plan be taken into account when considering whether to require a bank holding company to establish a recovery plan aimed at providing capital and liquidity support to the AI in case of need. Meanwhile, one respondent enquired whether another locally incorporated immediate holding company would have to be established if there was already one established for resolution planning purposes.
- 2.1.5 For a DBHC which is not under the direct or consolidated supervision of a banking regulator and engages in other business activities, there may be a need for the MA to require the DBHC to have in place a recovery plan of an acceptable standard. This serves to ensure that the DBHC is prepared to deal with any stress situation of itself to avoid spill-over to the AI and to provide support to the AI it holds as and when necessary. To this end, it is our intention to make use of the existing section 68H of the BO instead of introducing new provisions.
- 2.1.6 As regards the requirement of establishing an immediate holding company to hold one's interest in a locally incorporated AI, it is primarily intended for a shareholder controller which is unregulated where the circumstances warrant. Whereas, if a locally incorporated AI already has an immediate holding company established for resolution planning purposes, such AI (together with its holding companies) typically belongs to a group under the direct or consolidated supervision of a banking regulator. Hence, the requirement of establishing an immediate holding company for the purposes of the bank holding company framework will not be applicable to the latter case generally.
- 2.1.7 One respondent raised about the possibility of increased compliance burden. Regarding this, it would be useful to note that the proposed framework primarily seeks to codify in the BO the existing practice as outlined in SPM CS-1. Currently, related requirements are imposed by attaching conditions to the consent given to the relevant holding companies for being controllers under section 70 of the BO. Thus, the HKMA does not expect the implementation of the proposed framework to impose any material additional burden on the holding companies concerned, as they are already subject to the applicable requirements.

2.1.8 There were also suggestions for further guidance with illustrative examples to be provided to facilitate a smoother transition. It is the HKMA's plan to update SPM CS-1 (and to become statutory guidelines under section 7(3) of the BO) to set out how the new provisions will be exercised by the MA, including in relation to the designation of a holding company as a DBHC and the imposition of related requirements. The industry will be consulted on a draft revised SPM CS-1 in due course.

## 2.2 Engagement of skilled persons<sup>1</sup>

### 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?

2.2.1 Respondents generally agreed with providing for the MA to (i) appoint, or require AIs to appoint, skilled persons and (ii) appoint auditors (in addition to requiring AIs to appoint auditors) when necessary to assist the MA in performing the MA's functions under the BO. They noted that the proposed arrangement would enable the MA to discharge duties more effectively in a rapidly evolving banking and financial environment marked by increased complexity and technicality of AIs' operations. A respondent observed that other financial regulators in Hong Kong and other jurisdictions have already adopted similar practices.

2.2.2 Some respondents enquired whether a mechanism exists for AIs to challenge the MA's appointment of skilled persons or auditors and sought clarification on the related cost bearing arrangement. In this regard, it is clarified that:

- (i) if a skilled person is appointed by the MA to assist in the performance of the MA regulatory functions, it will be similar to the deployment of

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<sup>1</sup> In the consultation paper, the proposal regarding the engagement of skilled persons focused on application in relation to AIs. Following consultation with the Hong Kong Inter-Dealer Brokers Association and individual approved money brokers ("AMBs"), the proposed BO provisions in respect of the engagement of skilled persons will also apply to AMBs. For the avoidance of doubt, the proposed amendment to section 59(2) of the BO mentioned in paragraph 44(a) and 50(a) of the consultation paper will not apply to AMBs, as section 59(2) of the BO will continue to be applicable to AIs only.

HKMA staff as determined by the MA, and the costs will be borne by the MA;

- (ii) if a skilled person is appointed by the MA to prepare a report on an AI where such need arises due to, for instance, deficiencies in the AI's systems and controls, the MA may require the AI to defray the costs (in whole or in part). In such case, if aggrieved by the MA's cost defrayment decision, the AI may apply to the Review Tribunal for a review under section 101B of the BO; and
- (iii) if an AI is required by the MA to appoint a skilled person to prepare a report on certain matters, it will operate in the same manner as the existing section 59(2). That is: (a) the AI will be consulted on the preparation of a report; (b) the skilled person should either be among the ones nominated by the MA or proposed by the AI and approved by the MA; and (c) the costs will be borne by the AI.

2.2.3 On the scope of skilled persons, some respondents indicated that the proposal should permit the MA to engage a broad range and variety of qualified professionals, including cybersecurity specialists, climate risk experts, and other legal or unincorporated entities, such as companies or industry associations. There was also a question on whether the HKMA might consider issuing a list of pre-approved qualified professionals and auditors for AIs to select from, thereby promoting alignment and enhancing transparency regarding the expected standard of qualified professionals and auditors to be appointed.

2.2.4 Under the proposed provisions, skilled persons will not be pre-confined to those having any particular areas of expertise. It is expected that there may be a great deal of variability in competencies required depending on the tasks to be performed and the circumstances. Thus, the choice of a skilled person will have to be considered on a case-by-case basis and it may not be practical to establish and maintain a pre-determined list of skilled persons. When an AI is required to appoint a skilled person to prepare a report on specific matters, the AI can discuss the choice of the skilled person with the MA.

2.2.5 Some respondents enquired about supervision and oversight of the appointed skilled persons or auditors appointed by the MA and the related confidentiality arrangements. A respondent expressed concern that extending statutory immunity to them may inadvertently compromise the interests of the AIs and/or other parties involved (e.g. in cases of gross professional negligence), as such individuals may not have undergone the

same level of verification, review and training as those persons currently covered under section 127 of the BO. To clarify:

- (i) a skilled person or auditor appointed by the MA will be subject to appropriate terms and conditions (including the scope of work and performance expected of the skilled person) set by the MA and the MA will exercise appropriate oversight. Such a skilled person or auditor will also be subject to the official secrecy obligations under section 120 of the BO; and
- (ii) after considering the comment received, the intention is now that the BO section 127 immunity will not be extended to a skilled person or auditor appointed by the MA.

2.2.6 Meanwhile, there was a suggestion to expand the scope of section 63A of the BO to require a skilled person (as in the case of an auditor) to report matters that have an adverse and material impact on the financial position of an AI. We consider that it may not be practical to make this a standard statutory requirement, since the expertise of a skilled person can vary and be rather different from that of an auditor. This can nevertheless be considered on a case-by-case basis – for instance, if a skilled person is tasked with conducting a review relating to financial matters of the AI, reporting of any matter having an adverse and material financial impact can be required under the terms of reference of the appointment where necessary.

2.2.7 One respondent suggested guidelines to be issued on the application of the relevant new provisions, such as in respect of the competencies or standards expected of a skilled person or auditor proposed by an AI, communication and cooperation of a skilled person or auditor with the MA, and termination of relevant engagements.<sup>2</sup> For this purpose, the HKMA plans to revise and expand SPM module IC-3 (“SPM IC-3”) to cover the engagement of both auditors and skilled persons and will consult the industry further in due course.

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<sup>2</sup> On a related proposed technical amendment to sections 50(1)(c), 59(2), 63(3) and 63(3A) of the BO, one respondent considered it more appropriate for the requirement for AIs to take all reasonable steps to ensure appointed auditors meet the required qualifications, skills, and independence standards to be set out in SPM IC-3 instead of the BO, while another respondent supported the otherwise. On balance, the intention is now to set it out in SPM IC-3 for clarity and practicality.

## 2.3 Technical amendments

### 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?

2.3.1 Respondents were largely supportive of the proposed technical amendments, which would serve to reduce compliance burden, improve regulatory clarity and further align relevant provisions with those of other major financial centres.

2.3.2 Some queries were raised on certain items and our responses are as follows:

- **Sections 59(1) and 60(5):** A respondent sought clarification on how the amended provisions would operate.

Following the amendments, an AI incorporated outside Hong Kong may comply with either section 59(1) or section 60(5). In the latter case, it will no longer be necessary for the AI to seek exemption under the existing section 60(6) and thereby reducing administrative burden. Requirements under sections 59(1) and 60(5) will remain the same, including that the documents are to be submitted in respect of each financial year;

- **Section 67:** A respondent enquired about the necessity of requiring notification of any material adverse developments in the BO and suggested guidance to be provided on the notifiable matters (e.g. in relation to an AI's group) and reporting timeline etc.

The proposed amendment is necessary for closer alignment with the Basel Core Principles.<sup>3</sup> Without limiting the generality of the term, "material adverse development" would include any development which has, or is likely to have, a material impact on an AI's financial soundness or viability or an AI's ability to continue to

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<sup>3</sup> Specifically, Essential Criteria 10 of Core Principle 9 provides that "... the supervisor requires banks to notify it in advance of any substantive changes in their activities, structure and overall condition, or as soon as they become aware of any material adverse developments, including breaches of legal or prudential requirements."

carry on its banking business or its business of taking deposits. It would also include cases where an AI is likely to become unable to meet its obligations or is about to suspend payment. The intention is to build on the existing section 67. Further guidance will be provided in a relevant SPM module on which the industry will be consulted in due course;

- **Section 68:** A respondent suggested confining the expansion of scope to only certain types of non-Hong Kong authorities or that the MA would only allow non-Hong Kong authorities to examine books relating to matters within their respective areas of supervision.

Section 68 will be broadened only to the extent of providing for a non-Hong Kong supervisory authority with functions broadly corresponding to those of the Securities and Futures Commission or the Insurance Authority, having supervisory responsibility for the relevant non-banking activities conducted by the relevant AI in Hong Kong, to conduct examination. Any such examination will also be subject to the MA's prior approval (consistent with the existing provisions under section 68);

- **Section 73:** A respondent enquired about the operation of the originally proposed 7-year time limit (e.g. whether 7 years are counted from the commencement of current employment or revocation of the previous employer's authorization), while another respondent considered that the 7-year time limit might be too short for effectively gatekeeping individuals convicted of offences involving serious fraud or dishonesty and for adequately safeguarding consumer interests.

On further consideration, it is now intended that sections 73(1)(c), 73(1A)(c), 73(1A)(ii), and 73(1D) will be repealed (instead of incorporating a 7-year time limit on their application). This takes into account that under the separate proposal to modernise the MA's enforcement powers under the BO, the MA will have means to address cases involving directors, chief executives or managers whose misconduct contributed to the revocation, resolution, or liquidation of an AI;

- **Sections 7(3), 16(10), 82(1), 92(6), 97M and 118C(7):** A respondent suggested that when choosing whichever means of publication, consideration should be given to the public's right to know and ensuring the guidelines published would be readily accessible, traceable and familiar to the general public.

This is duly noted;

- **Definition of “indirect controller”:** A respondent enquired about the meaning of “employed in the management of the company”, and suggested providing for certain exclusions explicitly and taking into account analogous terms in other Hong Kong legislation (e.g. “significant controller” under the Companies Ordinance).

These issues will be taken into consideration when drafting the revised definition, including that the existing exclusion of “a Manager or Advisor, or any person in accordance with whose directions or instructions those directors are accustomed to act by reason only that they act on advice given in professional capacity” will remain. It is the intention to also provide for the exclusion of the chief executive, directors and managers of the AI concerned explicitly;

- **Definition of “working day”:** A respondent questioned whether a particular day is still considered to be a working day if the black rainstorm warning does not last for a full day and AI still opens its office for a full day and how extreme weather conditions are to be treated.

On further consideration, it is now the intention to retain the current definition of “working day” in the BO but to amend the Banking (Liquidity) Rules such that the calculations of average liquidity maintenance ratio and average core funding ratio will be based on each day instead of each “working day”. This takes into account that the liquidity position of a category 2 institution does change on Saturdays, public holidays and gale warning days, due to, for instance, payments via the Faster Payment System and continuation of stock market trading when Typhoon Signal No. 8 (or above) or Black Rainstorm Warning is issued by the Hong Kong Observatory, or “Extreme Conditions” is announced by the HKSAR Government;

- **Definition of “money broker”:** A respondent suggested that, in addition to specifying that the relevant markets should be the “wholesale treasury markets”, the definition of “deposit” in the BO should also be amended to expressly exclude certain types of certificates of deposit (“CDs”) so that securities firms arranging issuance of CDs would not be caught under the restriction in section 118A of the BO (under which only money brokers are permitted to arrange, facilitate, or negotiate the making of deposits).

We consider that it would not be appropriate to amend the definition of “deposit” for the purpose of clarifying the remit of the “money broker” definition and of section 118A. This is because any change to the definition of “deposit” would affect the application of a wide range of other provisions in the BO (and possibly also other related legislation).

Moreover, it may be useful to note that the money broker regime was introduced in 1997 primarily with the intention of providing a legal framework for the authorization and regulation of foreign exchange and deposit brokers in the wholesale market. Taking into account that the current “money broker” definition (together with the Banking Ordinance (Declaration under Section 2(14)(b)) Notice 2001) has been able to provide for the regime to operate in accordance with its intended purpose over the years, on further consideration, it appears that no amendment would be necessary at this stage.

2.3.3 Separately, respondents did not raise any specific comment regarding the proposed amendments to the HKABO and the HKAB By-laws.

## 2.4 Amendment to FIRO

### 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?

2.4.1 Respondents agreed with the proposed inclusion of an express reference to the “public interest” in the conditions for initiating resolution of a “within scope financial institution” under the FIRO. One respondent suggested the HKMA to further explore whether there are other important conditions, such as the interest of the affected persons (including depositors, policy owners and investors), to be included to ensure the comprehensiveness of the resolution mechanism.

2.4.2 To clarify, the existing section 8 of the FIRO provides that:

- (i) in performing, or considering performing, any function under this Ordinance, a resolution authority must have regard to the following objectives—
  - (a) to promote, and seek to maintain, the stability and effective working of the financial system of Hong Kong, including the continued performance of critical financial functions;
  - (b) to seek to protect deposits or insurance policies of a within scope financial institution to no less an extent than they would be protected under a protective scheme mentioned in Schedule 1 on a winding up of the financial institution;
  - (c) to seek to protect client assets of a within scope financial institution to no less an extent than they would be protected on a winding up of the financial institution;
  - (d) subject to paragraphs (a), (b) and (c), to seek to contain the costs of resolution and, in so doing, protect public money; and
- (ii) in carrying out a resolution of a within scope financial institution, a resolution authority must seek to act in the way that the resolution authority considers at the time of acting to be most appropriate for

meeting the resolution objectives.

2.4.3 In other words, a resolution authority must have regard to the interests of the relevant depositors, investors and policyholders, and seek to secure a degree of protection for them when considering whether the conditions for initiating resolution of a within scope financial institution are met and when carrying out a resolution. The current formulation of the resolution objectives is considered to already reflect the interests of the relevant affected persons.

### **3. Next steps**

- 3.1 The HKMA would like to thank all respondents for their valuable contributions to the consultation process. The HKMA will continue to work on the related legislative amendments with a view to introducing an amendment bill into the Legislative Council in 2026.

## **Annex      List of respondents**

(in alphabetical order)

1. Consumer Council
2. Dr Chi Zhang
3. Private Wealth Management Association
4. Simmons & Simmons
5. The Hong Kong Association of Banks
6. The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies