

PART 3

DETERMINATION OF CAPITAL BASE

Division 1—General

35. Interpretation of Part 3

In this Part, unless the context otherwise requires—
“available-for-sale” (可供出售)——

- (a) in relation to financial assets other than derivative contracts, means that the financial assets—
 - (i) are designated by an authorized institution as available for sale;
 - (ii) are not classified by an authorized institution as—
 - (A) loans and receivables; or
 - (B) financial assets at fair value through profit or loss; or
 - (iii) are not classified by an authorized institution as held to maturity investments;
- (b) in relation to financial instruments other than derivative contracts, means that the financial instruments—
 - (i) are designated by an authorized institution as available for sale;
 - (ii) are not classified by an authorized institution as—
 - (A) loans and receivables; or
 - (B) financial instruments at fair value through profit or loss; or
 - (iii) are not classified by an authorized institution as held to maturity investments;
- (c) in relation to loans, means that the loans are designated by an authorized institution upon initial recognition as available for sale;

“cash flow hedge” (現金流對沖), in relation to a hedging relationship of an authorized institution, means a hedge of an exposure of the institution to variability in cash flows which——

- (a) is attributable to—
 - (i) a particular risk associated with an asset or liability recognized on the institution’s balance sheet; or
 - (ii) a highly probable forecast transaction; and
- (b) could affect the institution’s profit or loss;

“connected company” (連繫公司), in relation to an authorized institution, means——

(a) a subsidiary, or the holding company, of the institution; or

(b) a company which falls within section 64(1)(b), (c), (d) or (e) of the Ordinance in respect of the institution;

“consolidation requirement” (綜合規定), in relation to a subsidiary of an authorized institution, means—

(a) a section 79A(1) requirement whereby a provision of Part XV of the Ordinance is to apply to the institution on a consolidated basis in respect of that subsidiary; or

(b) a section 98(2) requirement whereby the capital adequacy ratio of the institution is to be calculated on a consolidated basis in respect of that subsidiary;

“core capital” (核心資本), in relation to an authorized institution, means the sum, calculated in Hong Kong dollars, of the net book values of the institution’s capital items specified in section 38;

“debentures” (債權證) has the meaning assigned to it by section 2(1) of the Companies Ordinance (Cap. 32);

“debt securities” (債務證券) means any securities other than shares, stocks or import or export trade bills;

“financial assets not held for trading purposes” (非作交易用途的金融資產), in relation to an authorized institution, means any financial assets—

(a) held by the institution except—

(i) financial assets which are acquired principally for the purposes of selling in the near term; and

(ii) financial assets which form part of a portfolio of financial instruments—

(A) which are managed collectively; and

(B) for which there is evidence of a recent actual pattern of short-term profit-taking; and

(b) designated by the institution as financial assets not held for trading purposes;

“forecast transaction” (預期交易) means an uncommitted but anticipated future transaction;

“irredeemable” (不可贖回), in relation to non-cumulative preference shares, means that the shares are—

(a) irredeemable; or

(b) irredeemable except with the prior consent of the Monetary Authority;

“other regulatory capital instrument” (其他監管資本票據) means—

(a) subordinated debt—

(i) issued by an authorized institution incorporated in Hong Kong; and

(ii) included in the institution’s supplementary capital; or

(b) a capital instrument—

- (i) which is similar to subordinated debt described in paragraph (a); and
- (ii) which is issued by a company which is not an authorized institution incorporated in Hong Kong but is—
 - (A) subject to supervision by the relevant banking supervisory authority, or any securities regulator or insurance regulator who has a supervisory responsibility for the company, as the case may be; and
 - (B) subject to capital requirements imposed on it in the country by the relevant banking supervisory authority, or any securities regulator or insurance regulator who has a supervisory responsibility for the company, as the case may be;

“special purpose vehicle” (特定目的工具), in relation to an authorized institution, means a company or any other entity—

- (a) which is established by the institution for the sole purpose of raising capital for the institution; and
- (b) which does not trade or conduct any business except raising capital for the institution;

“specified amount” (指明數額), in relation to an authorized institution, means any amount which the institution is required under section 48(2) to deduct from its core capital and supplementary capital;

“subsidiary undertaking” (附屬企業) shall be construed in accordance with section 2B of the Companies Ordinance (Cap. 32) as read with the Twenty-third Schedule to that Ordinance;

“supplementary capital” (附加資本), in relation to an authorized institution, means the sum, calculated in Hong Kong dollars, of the net book values of the institution’s capital items specified in section 42.

36. Determination of capital base

(1) Subject to subsection (2), an authorized institution shall determine its capital base by adding together the institution’s core capital and supplementary capital.

(2) The supplementary capital of an authorized institution, before making any deductions therefrom required by section 48(2), which may be included in the determination of the institution’s capital base shall not exceed the institution’s core capital—

- (a) after making the deductions therefrom required by section 48(1); but
- (b) before making the deductions therefrom required by section 48(2), and the part of supplementary capital in excess, if any, shall be disregarded for the purposes of determining the institution’s capital base.

(3) For the avoidance of doubt, any capital which is not included in an authorized institution's supplementary capital by virtue of section 43, 44, 45 or 46 shall be disregarded for the purposes of determining the institution's capital base.

37. Essential characteristics of core capital and supplementary capital

(1) An authorized institution shall not include any capital in its core capital unless—

- (a) the capital is subordinated;
- (b) the capital is perpetual; and
- (c) the capital is non-cumulative.

(2) An authorized institution shall not include any capital in its core capital or supplementary capital unless—

- (a) the capital is freely available to absorb the institution's losses;
- (b) the capital ranks behind the claims of depositors and other creditors of the institution in a winding-up of the institution;
- (c) where the capital takes the form of shares or debt instruments—
 - (i) the shares permit, without restrictions, the non-payment of a dividend; and
 - (ii) the debt instruments are subject to a contractual right to defer interest payments; and
- (d) the capital is unsecured and fully paid-up.

(3) For the avoidance of doubt, it is hereby declared that guarantees and other types of contingent liability shall not be included in an authorized institution's core capital or supplementary capital.

(4) An authorized institution shall not issue any capital instrument other than ordinary shares (including issue by way of a subsidiary of the institution or a special purpose vehicle of the institution) unless it has consulted with the Monetary Authority to ascertain whether, under these Rules, the instrument proposed to be issued—

- (a) can be included in the institution's core capital;
- (b) can be included in the institution's supplementary capital; or
- (c) cannot be included in the institution's core capital or supplementary capital.

(5) An authorized institution shall not include, in its core capital or supplementary capital, a capital instrument issued at a discount, or only partly in a paid-up form, except to the extent that the proceeds paid-up on the instrument have been received by, and are immediately available to, the issuer of the instrument.

Division 2—Core capital

38. Core capital of authorized institution

Subject to sections 37, 43(6), 44(2), 45(3)(a) and 48, for the purposes of determining an authorized institution's capital base, the core capital of the institution shall consist of the following capital items—

- (a) the institution's paid-up ordinary share capital except any shares issued by the institution by virtue of capitalizing any property revaluation reserves of the institution referred to in section 42(1)(a);
- (b) the institution's paid-up irredeemable non-cumulative preference shares;
- (c) the amount standing to the credit of the institution's share premium account;
- (d) subject to section 39, the institution's published reserves except—
 - (i) unrealized fair value gains or losses on revaluation of available-for-sale loans;
 - (ii) cumulative fair value gains or losses on the hedged items and the hedging instrument in respect of cash flow hedges created for—
 - (A) available-for-sale financial instruments; and
 - (B) financial instruments measured at amortized cost;
 - (iii) cumulative fair value gains or losses on the hedging instrument which are recognized directly in equity through the statement of changes in equity in respect of cash flow hedges created for forecast transactions;
 - (iv) unaudited profit or loss of the current financial year, and the institution's profit or loss of the immediately preceding financial year pending audit completion; and
 - (v) any capital items referred to in section 42(1)(a), (b), (c) or (d);
- (e) subject to section 40, the institution's unaudited profit or loss of the current financial year, and the institution's profit or loss of the immediately preceding financial year pending audit completion, except—
 - (i) unrealized fair value gains or losses, without deduction of any deferred tax provisions attributable to the fair value gains or losses, on loans designated at fair value through profit or loss;
 - (ii) unrealized fair value gains or losses, without deduction of any deferred tax provisions attributable to the fair value gains or losses, on financial liabilities arising from any change in the institution's creditworthiness; and

- (iii) any capital items referred to in section 42(1)(a), (b), (c) or (d); and
- (f) subject to section 41, minority interests in the equity of the institution's subsidiaries arising from a consolidation requirement except any such minority interests which are not freely transferable to—
 - (i) the institution; or
 - (ii) members of the group of companies of which the institution is a member,after taking into account any relevant regulatory, legal or taxation constraints on the transfer of capital.

39. Provisions supplementary to section 38(d)

An authorized institution's published reserves falling within section 38(d) as at a particular date shall be net of dividends—

- (a) which are proposed or declared by the institution after that date; and
- (b) which, as at that date, are recognized, or are required to be recognized, as equity on the institution's balance sheet.

40. Provisions supplementary to section 38(e)

(1) An authorized institution's profit or loss falling within section 38(e) as at a particular date shall be net of dividends—

- (a) which are proposed or declared by the institution after that date; and
- (b) which, as at that date, are recognized, or are required to be recognized, as equity on the institution's balance sheet.

(2) An authorized institution may, with the prior consent of the Monetary Authority, include in its profit or loss falling within section 38(e) any unrealized fair value gains arising from the institution's holdings of equities and debt securities designated at fair value through profit or loss in its profit or loss account.

41. Provisions supplementary to section 38(f)

(1) Where—

- (a) an authorized institution's core capital consists of minority interests falling within section 38(f); and
- (b) the minority interests arise on consolidation in the paid-up irredeemable non-cumulative preference shares of the institution's subsidiaries which are special purpose vehicles,

that part of the institution's core capital shall not constitute more than 15% of the institution's core capital (including the minority interests)—

(c) after making the deductions therefrom required by section 48(1); but

(d) before making the deductions therefrom required by section 48(2).

(2) Where an authorized institution's core capital consists of minority interests falling within section 38(f) as at a particular date, that part of the institution's core capital shall be net of dividends—

(a) which are proposed or declared by the institution's subsidiaries after that date; and

(b) which, as at that date, are recognized, or are required to be recognized, as equity on the subsidiaries' balance sheets.

Division 3—Supplementary capital

42. Supplementary capital of authorized institution

(1) Subject to sections 37 and 48, for the purposes of determining an authorized institution's capital base, the supplementary capital of the institution shall consist of the following capital items—

(a) subject to section 43, that part of the institution's reserves which is attributable to fair value gains in profit or loss arising from—

(i) the revaluation of the institution's holdings of land and buildings except land and buildings mortgaged to the institution to secure a debt; and

(ii) the revaluation of the institution's share of the net asset value of any subsidiary of the institution to the extent that the value has changed as a result of the revaluation of the subsidiary's holdings of land and buildings except land and buildings mortgaged to the subsidiary to secure a debt;

(b) subject to section 44, that part of the institution's reserves which is attributable to fair value gains arising from—

(i) the revaluation of the institution's holdings of available-for-sale equities and debt securities; and

(ii) the institution's holdings of equities and debt securities designated at fair value through profit or loss which do not fall within section 38(e);

(c) with the prior consent of the Monetary Authority, that part of the institution's reserves which is attributable to fair value gains arising from the institution's holdings of any other financial assets not held for trading purposes, including such assets (other than unrealized gains or losses on loans) which are available-for-sale or designated at fair value through profit or loss;

- (d) subject to section 45, the institution's regulatory reserve for general banking risks and collective provisions;
- (e) the institution's perpetual subordinated debt where, under the terms on which the debt instrument is to be issued, the Monetary Authority is satisfied that the following conditions are met (and, after issue, will continue to be met)—
 - (i) the claims of the lender against the institution are fully subordinated to those of all unsubordinated creditors;
 - (ii) the debt is not secured against any assets of the institution;
 - (iii) the money advanced to the institution is permanently available to it;
 - (iv) the debt is not repayable without the prior consent of the Monetary Authority;
 - (v) the money advanced to the institution is available to meet losses without the institution being obliged to cease trading;
 - (vi) the institution is entitled to defer the payment of interest where its profitability will not support such payment; and
 - (vii) if the rate of interest payable on the debt is liable to be increased under the terms of the debt instrument—
 - (A) the rate of interest will not be increased until the expiry of 10 years from the day on which the debt is issued;
 - (B) the rate of interest will not be increased more than once; and
 - (C) the rate of interest will not be increased beyond a limit considered appropriate by the Monetary Authority;
- (f) the institution's paid-up irredeemable cumulative preference shares where, under the terms on which the shares are to be issued, the Monetary Authority is satisfied that the following conditions are met (and, after issue, will continue to be met)—
 - (i) the shares are not redeemable without the prior consent of the Monetary Authority;
 - (ii) the money raised by the issue of the shares is available to meet losses without the institution being obliged to cease trading; and
 - (iii) if the dividends payable on the shares are liable to be increased under the terms—
 - (A) such dividends will not be increased until the expiry of 10 years from the day on which the shares are issued;
 - (B) such dividends will not be increased more than once; and
 - (C) such dividends will not be increased beyond a limit considered appropriate by the Monetary Authority;

- (g) subject to section 46, the institution's term subordinated debt where, under the terms on which the debt instrument is to be issued, the Monetary Authority is satisfied that the following conditions are met (and, after issue, will continue to be met)—
- (i) the claims of the lender against the institution are fully subordinated to those of all unsubordinated creditors;
 - (ii) the debt is not secured against any assets of the institution;
 - (iii) the debt has a minimum initial period to maturity of more than 5 years (even though that period may be subsequently reduced with the prior consent of the Monetary Authority);
 - (iv) any debt repayable prior to maturity will not be so repaid without the prior consent of the Monetary Authority; and
 - (v) if the rate of interest payable on the debt is liable to be increased under the terms of the debt instrument—
 - (A) the rate of interest will not be increased until the expiry of 5 years from the day on which the debt is issued;
 - (B) the rate of interest will not be increased more than once; and
 - (C) the rate of interest will not be increased beyond a limit considered appropriate by the Monetary Authority;
- (h) subject to section 46, the institution's paid-up term preference shares where, under the terms on which the shares are to be issued, the Monetary Authority is satisfied that the following conditions are met (and, after issue, will continue to be met)—
- (i) the shares have a minimum initial period to maturity of more than 5 years (even though that period may be subsequently reduced with the prior consent of the Monetary Authority);
 - (ii) any shares redeemable prior to maturity will not be so redeemed without the prior consent of the Monetary Authority; and
 - (iii) if the dividends payable on the shares are liable to be increased under the terms—
 - (A) such dividends will not be increased until the expiry of 5 years from the day on which the shares are issued;
 - (B) such dividends will not be increased more than once; and
 - (C) such dividends will not be increased beyond a limit considered appropriate by the Monetary Authority; and

- (i) subject to section 47, minority interests in the paid-up irredeemable cumulative preference shares and paid-up term preference shares of the institution's subsidiaries arising from a consolidation requirement imposed on the institution, and minority interests which are not included in the institution's core capital pursuant to section 38(f) by virtue only of section 41.

(2) In subsection (1)(a) and (b)—

“reserves” (儲備), in relation to an authorized institution—

- (a) means the institution's reserves without deduction of any deferred tax provisions attributable to the reserves; and
- (b) includes, in relation to subsection (1)(a), shares issued by the institution through capitalizing reserves falling within that part of the institution's reserves referred to in that subsection.

43. Provisions supplementary to section 42(1)(a)

(1) An authorized institution's reserves shall not fall within that part of reserves referred to in section 42(1)(a) unless—

- (a) the institution has a clearly documented policy on the frequency and method of revaluation of its holdings of land and buildings which is satisfactory to the Monetary Authority;
- (b) the institution does not depart from that policy except after consultation with the Monetary Authority;
- (c) subject to paragraph (d), any revaluation of the institution's holdings of land and buildings is undertaken by an independent professional valuer;
- (d) in any case where the institution demonstrates to the satisfaction of the Monetary Authority that, despite all reasonable efforts, the institution has been unable to obtain the services of an independent professional valuer to undertake the revaluation of all or part, as the case may be, of the institution's holdings of land and buildings, any revaluation of such holdings undertaken by a person who is not an independent professional valuer is endorsed in writing by an independent professional valuer;
- (e) any revaluation of the institution's holdings of land and buildings is—
 - (i) approved by the institution's external auditors; and
 - (ii) explicitly reported in the institution's audited accounts; and

(f) the fair value gains referred to in section 42(1)(a) are recognized in accordance with relevant accounting standards and any such gains not recognized in the financial statements of the institution are excluded from the part of reserves referred to in that section.

(2) Subject to subsections (3) and (4), an authorized institution shall not include in its supplementary capital more than 45% of any fair value gains of any item referred to in section 42(1)(a) arising from any revaluation referred to in that section.

(3) Subject to subsection (4), an authorized institution shall only include in its supplementary capital—

(a) that amount of fair value gains referred to in section 42(1)(a) which arise from revaluations referred to in section 42(1)(a)(i) as does not exceed—

(i) where the institution was an authorized institution on 31 December 1998, the amount included in the institution's supplementary capital as at that date in respect of the like gains as at that date; or

(ii) where the institution became an authorized institution after 31 December 1998, the amount included in the institution's supplementary capital as at the relevant date in respect of the like gains as at that date; and

(b) that amount of fair value gains referred to in section 42(1)(a) which arise from revaluations referred to in section 42(1)(a)(ii) as does not exceed—

(i) where the institution was an authorized institution on 31 December 1998, the amount included in the institution's supplementary capital as at that date in respect of the like gains as at that date; or

(ii) where the institution became an authorized institution after 31 December 1998, the amount included in the institution's supplementary capital as at the relevant date in respect of the like gains as at that date.

(4) An authorized institution shall not include any fair value gains referred to in section 42(1)(a) for the purposes of determining its capital base unless—

(a) the gains comprise—

(i) where the institution was an authorized institution on 31 December 1998, any amount of fair value gains which as at that date were reported to the Monetary Authority; or

(ii) where the institution became an authorized institution after 31 December 1998, any amount of fair value gains which as at the relevant date were reported to the Monetary Authority; or

- (b) the gains arise from a merger or acquisition and the institution has the prior consent of the Monetary Authority to so use the gains.

(5) An authorized institution shall not, in calculating its supplementary capital, set-off losses in respect of land and buildings which are for the institution's own use where the losses are recognized in the institution's profit or loss against unrealized gains that are reflected directly in equity through the statement of changes in equity.

(6) An authorized institution shall deduct from its core capital any cumulative losses of the institution arising from the institution's holdings of land and buildings below the depreciated cost value (whether or not any such land and buildings are held for the institution's own use or for investment purposes).

(7) In subsection (3)(a) and (b)—
“supplementary capital” (附加資本), in relation to an authorized institution, has the meaning assigned to “Supplementary Capital” by the Third Schedule to the Ordinance—

- (a) as in force on 31 December 1998 if the institution was an authorized institution on that date; or
- (b) as in force on the relevant date in any other case if, and only if, the relevant date is a date before the date on which this section comes into operation.

(8) In this section—
“relevant date” (有關日期), in relation to an authorized institution, means that date after 31 December 1998 on which the institution became an authorized institution.

44. Provisions supplementary to section 42(1)(b)

(1) An authorized institution shall not include in its supplementary capital more than 45% of any fair value gains referred to in section 42(1)(b).

(2) An authorized institution—

(a) shall deduct from its core capital—

(i) cumulative unrealized losses of the institution—

- (A) which arise from the institution's holdings of available-for-sale equities and debt securities; and
- (B) which fall below the cost of those securities; and

(ii) impairment losses in respect of the institution's holdings of available-for-sale equities and debt securities; and

- (b) shall not, for the purposes of paragraph (a)(ii), set-off any impairment losses in respect of securities referred to in that paragraph against any unrealized gains in respect of those securities.

(3) An authorized institution shall deduct from its supplementary capital any overall deficit arising from the revaluation of its holdings of available-for-sale equities and debt securities falling within section 42(1)(b)(i) (but excluding any losses falling within subsection (2)(a)).

45. Provisions supplementary to section 42(1)(d)

(1) Subject to subsections (2) and (3), an authorized institution which uses the STC approach or BSC approach, or both, shall not include in its supplementary capital that amount of its total regulatory reserve for general banking risks and collective provisions which exceeds 1.25% of the institution's total risk-weighted amount for relevant risks, being the sum of all the institution's risk-weighted amounts for—

- (a) all the institution's non-securitization exposures to credit risk subject to the STC approach or BSC approach, or both;
- (b) all the institution's securitization exposures to credit risk subject to the STC(S) approach;
- (c) all the institution's exposures to market risk; and
- (d) all the institution's exposure to operational risk.

(2) An authorized institution which uses any combination of the STC approach, BSC approach and IRB approach—

- (a) subject to paragraph (b), shall apportion its total regulatory reserve for general banking risks and collective provisions between the STC approach, BSC approach, IRB approach, STC(S) approach or IRB(S) approach on a pro rata basis in accordance with the proportions of the institution's risk-weighted amount for credit risk which are calculated by using the STC approach, BSC approach, IRB approach, STC(S) approach or IRB(S) approach, as the case requires;
- (b) may, with the prior consent of the Monetary Authority, use its own method to apportion its total regulatory reserve for general banking risks and collective provisions between the STC approach, BSC approach, IRB approach, STC(S) approach or IRB(S) approach; and
- (c) shall, after it has carried out the apportionment referred to in paragraph (a) or (b)—

- (i) comply with subsection (1) in respect of that portion of its total regulatory reserve for general banking risks and collective provisions which is apportioned to the STC approach or BSC approach, or both, and the STC(S) approach; and
 - (ii) exclude from its supplementary capital that portion of its total regulatory reserve for general banking risks and collective provisions which is apportioned to the IRB approach and IRB(S) approach.
- (3) Where an authorized institution uses the IRB approach—
 - (a) subject to subsection (2)(c)(ii) and paragraph (b), the institution shall deduct the excess of its total EL amount over its total eligible provisions from its core capital and supplementary capital in accordance with section 48(2)(b);
 - (b) if the total EL amount referred to in paragraph (a) is less than the total eligible provisions referred to in that paragraph, the institution may include the excess of the total eligible provisions over the total EL amount in its supplementary capital up to 0.6% of its risk-weighted amount for credit risk calculated by using the IRB approach.

46. Provisions supplementary to section 42(1)(g) and (h)

An authorized institution shall—

- (a) in the case of a debt instrument falling within section 42(1)(g) or a share falling within section 42(1)(h), for the purposes of calculating its supplementary capital, discount by 20% the original amount of the debt instrument or share, as the case may be, each year during the 4 years immediately preceding the maturity of the debt instrument or share, as the case may be; and
- (b) exclude from its supplementary capital any amount by which the sum of the amounts falling within section 42(1)(g) and (h) exceeds 50% of the institution's core capital—
 - (i) after making the deductions therefrom required by section 48(1); but
 - (ii) before making the deductions therefrom required by section 48(2).

47. Provisions supplementary to section 42(1)(i)

An authorized institution's minority interests falling within section 42(1)(i) as at a particular date shall be net of dividends—

- (a) which are proposed or declared by the institution's subsidiaries after that date; and
- (b) which, as at that date, are recognized, or are required to be recognized, as equity on the subsidiaries' balance sheets.

Division 4—Deductions from core capital and supplementary capital**48. Deductions from core capital and supplementary capital**

- (1) An authorized institution shall deduct from its core capital—
 - (a) the amount of goodwill of the institution;
 - (b) the amount of other intangible assets of the institution;
 - (c) the amount of net deferred tax assets of the institution;
 - (d) the amount of any gain-on-sale arising from a securitization transaction in which the institution is the originating institution; and
 - (e) any other securitization exposure specified in a notice given to the institution under subsection (5).
- (2) Subject to section 49(1), an authorized institution shall deduct from both of its core capital and supplementary capital—
 - (a) subject to subsection (3), the amount of the institution's holding of shares in a holding company of the institution;
 - (b) if the institution uses the IRB approach and the institution's total EL amount referred to in section 45(3)(a) exceeds the institution's total eligible provisions referred to in that section, the excess of the total EL amount over the total eligible provisions;
 - (c) subject to subsection (3), the amount of the institution's holdings of shares and other regulatory capital instruments issued by a company in which the institution is entitled to exercise, or control the exercise of, more than 20% of the voting power at any general meeting of the company (whether or not the company is a subsidiary of the institution) but excluding—

- (i) any such shares and other regulatory capital instruments held by the institution in a subsidiary of the institution the subject of a consolidation requirement; or
 - (ii) the institution's reserves which arise from the revaluation of the holdings of land and buildings of a subsidiary of the institution and do not fall within the definition of "reserves" in section 42(2);
- (d) subject to subsection (3), the amount of the institution's holdings of shares and other regulatory capital instruments in any relevant subsidiary undertaking of the institution but excluding—
 - (i) any such holdings falling within paragraph (c); or
 - (ii) any such holdings excluded from paragraph (c) by virtue of falling within subparagraph (i) or (ii) of paragraph (c);
- (e) subject to subsection (3), the amount of any of the institution's holdings of shares and other regulatory capital instruments issued by any bank not falling within paragraph (a), (c) or (d) except where the institution demonstrates to the satisfaction of the Monetary Authority that the holding—
 - (i) is not the subject of an arrangement whereby 2 or more persons agree to hold each other's capital; or
 - (ii) is not otherwise a strategic investment;
- (f) subject to subsection (3), the amount of—
 - (i) any of the institution's loans to a connected company of the institution not falling within paragraph (a), (c), (d) or (e);
 - (ii) any of the institution's holdings of shares and debentures issued by a connected company of the institution not falling within paragraph (a), (c), (d) or (e); and
 - (iii) any of the institution's guarantees of the liabilities of a connected company of the institution not falling within paragraph (a), (c), (d) or (e),except where the institution demonstrates to the satisfaction of the Monetary Authority that the loan was made, the shares and debentures are being held, or the guarantee was given, as the case may be, in the ordinary course of the institution's business;
- (g) subject to subsection (3), in the case of the institution's holdings of shares in any company not falling within paragraph (a), (c), (d), (e) or (f), where the net book value of the holdings exceeds 15% of the capital base of the institution as reported in the institution's capital adequacy ratio return as at the immediately preceding calendar quarter end date, that amount of the net book value of the holdings which exceeds that 15%;

- (h) subject to subsection (4) and section 49(2), the amount of any relevant capital shortfall in respect of a subsidiary of the institution—
 - (i) which is a securities firm or insurance firm; and
 - (ii) which is not the subject of a consolidation requirement imposed on the institution;
- (i) if the institution uses the PD/LGD approach to calculate its credit risk in respect of equity exposures, the EL amount of such exposures as calculated in accordance with section 223; and
- (j) other amounts specified in Schedule 5 for the purposes of this paragraph.

(3) The amount of each holding of shares required to be deducted from both of an authorized institution's core capital and supplementary capital under subsection (2)(a), (c), (d), (e), (f) and (g) shall be net of any amount of goodwill (relating to the respective holdings of shares) deducted under subsection (1)(a).

(4) Where a subsidiary of an authorized institution which is a securities firm or insurance firm fails to meet the minimum capital requirements applicable to it and fails to remedy the breach within a period as determined or prescribed by the securities regulator or insurance regulator of the securities firm or insurance firm, as the case may be, then—

- (a) the institution shall, as soon as practicable after it becomes aware of the failure, give notice in writing to the Monetary Authority of particulars of the securities firm or insurance firm, as the case may be, and the details of the failure; and
- (b) the Monetary Authority may, by notice in writing given to the institution, and beginning on such date, or the occurrence of such event, as is specified in the notice, and ending on such date, or the occurrence of such event, as is specified in the notice, require the institution to deduct in its determination of capital base an amount which, in the opinion of the Monetary Authority, represents the shortfall of the securities firm or insurance firm, as the case may be, in meeting those minimum capital requirements.

(5) The Monetary Authority may, by notice in writing given to an authorized institution, require the institution to deduct from its core capital a securitization exposure of the institution specified in the notice.

(6) For the avoidance of doubt, it is hereby declared that—

- (a) the exclusion under subsection (2)(c)(i) does not apply only when an authorized institution is calculating its capital adequacy ratio on a solo basis;

- (b) in the case of an authorized institution calculating its capital adequacy ratio on a solo-consolidated basis, the reference to “subsidiary” in subsection (2)(c)(i) means a solo-consolidated subsidiary of the institution.

(7) In this section—

“relevant capital shortfall” (有關資本短欠), in relation to a subsidiary of an authorized institution, means the amount specified in a notice under subsection (4) given to the institution in respect of that subsidiary;

“relevant subsidiary undertaking” (有關附屬企業), in relation to an authorized institution, means a subsidiary undertaking of the institution—

- (a) which does not fall within the range of consolidation specified in a section 79A(1) requirement or section 98(2) requirement in relation to the institution; and
- (b) which falls within the range of consolidation specified in accounting standards issued by the Council of the Hong Kong Institute of Certified Public Accountants pursuant to section 18A of the Professional Accountants Ordinance (Cap. 50).

49. Provisions supplementary to section 48(2)

(1) An authorized institution shall—

- (a) subject to paragraph (c) and subsection (2), deduct from its core capital 50% of any specified amount;
- (b) subject to paragraph (c) and subsection (2), deduct from its supplementary capital 50% of any specified amount; and
- (c) deduct from its core capital such amount of any specified amount which cannot be deducted under paragraph (b) because it exceeds the amount of supplementary capital available for such deduction under that paragraph.

(2) It is hereby declared that the amount to be deducted under section 48(2)(h) by an authorized institution from its core capital and supplementary capital—

- (a) is in addition to any other deduction the institution is required to make under section 48(2) from its core capital and supplementary capital in respect of the subsidiary concerned of the institution; and
- (b) represents the amount by which that subsidiary is deficient in meeting its minimum capital requirements.