

# **BANKING ORDINANCE**

## **Minimum Criteria for Authorization**

### **A Guideline issued by the Monetary Authority under section 16(10)**

#### **Introduction**

1. This “Guideline on Minimum Criteria for Authorization” (the Guideline), which is issued under section 16(10) of the Banking Ordinance (the Ordinance) (Cap. 155), sets out the manner in which the Monetary Authority (MA) will interpret the licensing criteria set out in the [Seventh Schedule](#) to the Ordinance (the Schedule) and exercise the functions conferred by it. This Guideline supersedes the previous “Guideline on minimum criteria for authorization” issued by the MA under section 16(10) of the Ordinance on 18 November 2016.
2. Under section 16(1) of the Ordinance the MA has a general discretion to grant or refuse an application for authorization. Under section 16(2), the MA is required to refuse to authorize if any one or more of the criteria specified in the Schedule are not fulfilled with respect to the applicant.
3. Normally, the MA will not refuse to authorize an applicant if he forms the opinion that all the criteria in the Schedule are satisfied with respect to it. As noted above, however, the MA does have a discretionary power to refuse to grant authorization (though he has to give reasons for doing so and give the applicant the opportunity to be heard). For example, this power may be exercised where the application in question gives rise to prudential concerns which are not covered in the existing criteria in the Schedule.
4. The following general points apply to the criteria in the Schedule -
  - (a) they are continuing in nature. That is, they apply to institutions not only at the time of authorization but also thereafter. It follows that failure to meet the criteria by existing authorized institutions would be a ground for revocation of authorization (although the MA would have the discretion to decide whether to revoke);
  - (b) they are forward looking. The MA needs to decide whether the criteria are met by the institution at the time of authorization and will continue to be met if it is authorized. In forming this judgment, the MA will have regard to such factors as the track record of the applicant in Hong Kong (if it has one) or that of its parent; the quality of the management and internal control systems of the proposed operation in Hong Kong; and the proposed business activities and financial projections of the institution as set out in its business plan; and
  - (c) they apply to the institution as a whole. This reflects the fact that it is the institution as a whole which is authorized and not simply the operations in Hong Kong. Under Paragraph 1(4) of the Schedule, in relation to an

institution incorporated outside Hong Kong, the MA may regard himself as satisfied with respect to any matter relating to the criteria where the relevant banking supervisory authority informs the MA that it is satisfied in relation to that matter, provided that the MA is satisfied as to the scope and nature of the supervision exercised by that authority (see below). This would apply, for example, where the MA wished to satisfy himself regarding the management or financial soundness of an overseas bank by consulting its home supervisor. However, the final judgment regarding an institution's suitability for authorization rests with the MA himself.

5. In satisfying himself regarding any matter relating to the criteria, the MA is not bound to continue to hold that opinion after the institution concerned is authorized or where it seeks a different authorization (e.g. to change from being a deposit-taking company (DTC) to a restricted licence bank (RLB)). Nor is the MA bound to hold a similar opinion in relation to any other applicant seeking the same or a different authorization. In other words, each decision is taken on a case-by-case basis having regard to the merits of the particular case.
6. A description of each of the criteria in the Schedule and the MA's interpretation of them is set out below. The paragraph references relate to those in the Schedule. In a number of places, the Paragraphs in the Schedule cross-refer to statutory provisions in the Ordinance which the MA must be satisfied are met by the institution at the time of authorization and will continue to be met after authorization.

## **Paragraph 2 - adequacy of home supervision**

7. An applicant which is incorporated outside Hong Kong 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 applicant is incorporated). A "bank" is as defined in section 46(9) of the Ordinance, 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.
8. In considering the adequacy of supervision exercised by the home supervisor, the MA will have regard to the extent to which that supervisor has established, or is actively working to establish, the necessary capabilities to meet the Basel standards relating to the supervision of international banks. Among other things, the standards provide that all international banking groups and international banks should be supervised by a home country authority that capably performs consolidated supervision. In making his assessment, the MA will take account of -
  - (a) the legal and administrative powers of the home supervisor;
  - (b) the supervisory framework of the home supervisor;
  - (c) the bank resolution regime of the home jurisdiction, and the approach of the home resolution authority to resolution planning;

- (d) the method of supervision adopted by, and the resources available to, the home supervisor;
- (e) the information and analysis published by international organisations, such as –
- the International Monetary Fund (IMF) country reports on the IMF's assessments of the home jurisdiction's compliance with the Basel Core Principles for Effective Banking Supervision carried out within the framework of the Financial Sector Assessment Programme;
  - the reports issued by the Basel Committee on Banking Supervision (Basel Committee) in respect of assessment of the home jurisdiction's completeness and consistency of implementation of Basel II/2.5/III standards under the Regulatory Consistency Assessment Programme; and
  - the Financial Stability Board (FSB) reports on assessments of the home jurisdiction's compliance with the FSB Key Attributes of Effective Resolution Regimes for Financial Institutions and assessments of resolution or crisis management frameworks as conducted by other international organisations such as the IMF and World Bank; and
- (f) past experience in dealings with the home supervisor and home resolution authority.

### **Paragraph 3 - identity of controllers**

9. Paragraph 3 provides that the MA must be satisfied that he knows the identity of each controller of the institution. If necessary, the MA will seek the assistance of the home supervisor of an institution incorporated outside Hong Kong in order to obtain this information. "Controller" is defined in section 2 of the Ordinance and includes -
- (a) indirect controller - a person in accordance with whose directions or instructions, the directors of the institution or of another company of which it is a subsidiary are accustomed to act;
  - (b) minority shareholder controller - a person who either alone or with associates controls 10% or more, but not more than 50%, of the voting rights of the institution or of another company of which it is a subsidiary; and
  - (c) majority shareholder controller - a person who either alone or with associates controls over 50% of the voting rights of the institution or of another company of which it is a subsidiary.

## **Paragraphs 4 & 5 - fitness and propriety of directors, controllers, chief executives and executive officers**

10. These Paragraphs provide that the MA must be satisfied that each person who is, or is to be, a director, chief executive, executive officer, or controller of an authorized institution is a fit and proper person to hold the particular position which he holds or is to hold.
11. In considering whether a person fulfils this criterion, the MA has regard to a number of general considerations, while also taking account of the circumstances of the particular position held and the institution concerned.

### Directors and chief executives

12. Paragraph 4 of the Schedule provides that the MA must be satisfied that the directors and chief executive (including their alternates) of an authorized institution incorporated in Hong Kong are fit and proper persons to occupy their positions. The MA also has a statutory responsibility to approve such persons under section 71 of the Ordinance. A similar approval under section 71 must also be given in respect of the chief executive of the business in Hong Kong of an institution incorporated outside Hong Kong. No such approval under section 71 is required in respect of the directors and chief executive of an institution in the place where it is incorporated outside Hong Kong. However, in applying the authorization criteria, the MA must satisfy himself that such persons are fit and proper under Paragraph 5 of the Schedule. In doing so, the MA will rely heavily on the views of the home supervisor, but also reserves the right to take into account any other information which may be available to him.
13. The MA considers that the board of directors of banks incorporated in Hong Kong plays an important role in the corporate governance of those banks. The MA expects one-third of the board of directors, or three of its members, whichever is the higher, to be independent non-executive directors. Furthermore, at least two of such independent non-executive directors should possess a background in accounting, banking or other relevant financial industry. To ensure independence, such directors should not be involved in the management of the bank and should be free from any business or other relationship which could materially interfere with the exercise of their independent judgment in relation to the affairs of the bank.
14. The MA strongly encourages RLBs and DTCs incorporated in Hong Kong to appoint at least three independent non-executive directors to their boards wherever practicable. In any event, the MA will expect that an appropriate number of independent, or at least non-executive, directors should be included in RLB and DTC boards. While the appropriate number may vary on a case-by-case basis (depending on a number of factors such as the size of the institution, the total number of directors on the board and whether the institution is majority-owned by a bank incorporated in or outside Hong Kong), there should at least be one independent non-executive director with background in accounting, banking or other relevant financial industry.
15. With regard to a person who is, or is to be, a director or chief executive, the relevant considerations include whether he has sufficient skills, knowledge, experience, and

soundness of judgment properly to undertake and fulfil his particular duties and responsibilities. The standards required of persons in these respects will vary considerably, depending on the precise position held, or to be held, by the person concerned. Thus a person could be fit and proper for one position, but not fit and proper for a position involving different responsibilities and duties. The diligence with which he is fulfilling or is likely to fulfil those duties and responsibilities is also considered, so that the MA can assess whether the person does or will devote sufficient time and attention to the role required of him.

16. To enable the MA to consider whether a proposed candidate for appointment to an authorized institution's board or as its chief executive, alternate chief executive or executive officer is fit and proper to carry out his or her duties, the MA may, where he considers it appropriate, conduct a face-to-face meeting with the candidate. This will allow the MA to assess first-hand the candidate's personal qualities, skills, knowledge and understanding of the authorized institution's business and key regulatory and supervisory requirements (such as requirements relating to risk management practices, capital adequacy and liquidity) and whether he will be able to fulfil adequately the role for which he is being considered.
17. These relevant considerations are set out in the module [CG-1](#) "Corporate Governance of Locally Incorporated Authorized Institutions" in the Supervisory Policy Manual (SPM). The Manual is available on-line for downloading at <http://www.hkma.gov.hk/eng/key-functions/banking-stability/supervisory-policy-manual.shtml>.
18. The probity of the person concerned is very important - it is essential that a person with responsibilities in relation to a banking or deposit-taking business is of high integrity. In contrast to the other elements of the fitness and propriety criterion, the level of probity required will tend to be much the same whatever position is held.
19. More specifically, the MA takes into account, among others, the following factors -
  - (a) the person's reputation and character. This consideration includes, among others, whether the person has a relevant criminal record, e.g. convictions for fraud or other dishonesty would obviously be relevant to probity. The MA gives particular weight to whether the person has contravened any provision of banking, insurance, securities or other legislation designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice. Persons who are known to the MA to have been involved in any business practices that appear to be deceitful or oppressive or otherwise improper or which otherwise reflect discredit on their method of conducting business are unlikely to qualify under these criteria;
  - (b) the person's knowledge and experience, competence, soundness of judgment and diligence. In making such an assessment, the MA would consider whether the person has had experience of similar responsibilities previously, his record in fulfilling them and, where appropriate, whether he has appropriate qualifications and training. As to his soundness of judgment, the MA looks to,

among other things, the degree of balance, rationality and maturity demonstrated in his conduct and decision-taking;

- (c) whether the person has a record of non-compliance with various non-statutory codes or has been censured, disciplined or disqualified by regulators (including overseas regulators) or professional bodies. Those who have such records are unlikely to be acceptable;
  - (d) whether the person has been concerned as a director with a company which has been wound up by the court on the application of creditors, and whether the person has been concerned as a director with a company which has been subject to any investigation by inspectors appointed by the Financial Secretary under section 840 or 841 of the Companies Ordinance (Cap. 622). In looking at these cases, the seriousness of the circumstances leading to the winding up or investigation, the extent of the person's involvement in them, the lapse of time and his conduct since are relevant;
  - (e) the person's business record and other business interests, and his financial soundness and strength, to ensure that any adverse financial position of the person would not undermine the confidence of depositors through "contagion" and that business decisions of the authorized institution will be made at arm's length; and
  - (f) whether the person, in the case of an independent non-executive director, has direct or indirect financial or other interests in the business of the institution as well as his relationship, if any, with significant shareholders of the institution, taking into account relevant international standards and local rules such as the Listing Rules of the Stock Exchange of Hong Kong.
20. Many of the above criteria can be similarly applied to the assessment of the eligibility of corporate applicants to become directors by looking into the quality of management, financial strength and reputation of these corporate bodies.
21. Once an institution is authorized, the MA has continuing regard to the performance of the person in the exercise of his duties. Imprudence in the conduct of an institution's business, or actions which have threatened (without necessarily having damaged) the interests of depositors or potential depositors will reflect adversely on the competence and soundness of judgment of those responsible. Similarly, failure by an institution to conduct its business with integrity, prudence and professional competence will reflect adversely on the probity and/or competence and/or soundness of judgment of those responsible.

#### Executive officers

22. Under the Securities and Futures Ordinance (SFO) (Cap. 571), authorized institutions are required to register with the Securities and Futures Commission (SFC) (as registered institutions if they wish to carry on any of the following regulated activities: dealing in and/or advising on securities, dealing in and/or advising on futures contracts,

advising on corporate finance, providing automated trading services, asset management and providing credit rating services.

23. Under section 71D of the Ordinance, for each “regulated activity” that it engages in, every registered institution needs to appoint at least two individuals as executive officers to be responsible for directly supervising the conduct of the activity. For a registered institution incorporated outside Hong Kong, the executive officers should be directly supervising the conduct of such activity in Hong Kong.
24. While the ultimate responsibility for the regulation of intermediaries in the securities market rests with the SFC, the MA is the front-line supervisor of the regulated activities of registered institutions and has a statutory responsibility to grant consent to the executive officers of registered institutions under section 71C of the Ordinance. The MA must be satisfied that the person concerned has sufficient authority and is fit and proper to hold the particular position in the institution.
25. In determining the fitness and propriety of an executive officer, the MA will have regard to the considerations set out in section 129 of the SFO as well as the Fit and Proper Guidelines and other supplementary guidance issued by the SFC. These include -
  - (a) the person’s financial status, including whether the person has a history of bankruptcy and failure to meet any judgment debt;
  - (b) the person’s educational or other qualifications or experience having regard to the nature of the functions to be performed as an executive officer, and his competence in carrying on the regulated activity. The MA will take into account whether the person possesses the recognised qualifications and relevant experience specified in the SFC Guidelines on Competence and whether he meets the continuous training requirements stipulated in the SFC Guidelines on Continuous Professional Training; and
  - (c) the person’s reputation, character, reliability, financial integrity, honesty and fairness. The assessment will cover whether the person (or any corporation of which the person has been a controller or director) has a record of any of the following -
    - (i) finding by a court or other competent authority of fraud, dishonesty or misfeasance,
    - (ii) convicted of a criminal offence or the subject of unresolved criminal charges,
    - (iii) censured, disciplined or disqualified by professional or regulatory bodies,
    - (iv) refused or restricted from the right to carry on any trade, business or profession for which a specific licence, registration or other authorization is required by law,

- (v) disqualified by a court of competent jurisdiction from being a director,
- (vi) found culpable of market misconduct by the Market Misconduct Tribunal, or failed to abide by any codes and guidelines promulgated by regulatory bodies or any relevant exchanges in Hong Kong or overseas,
- (vii) being concerned with a corporation or business that:
  - has been wound up (other than by members' voluntary dissolution while solvent) or was otherwise insolvent or had a receiver or administrator appointed, however described;
  - was found guilty of fraud;
  - has not met all obligations to clients; and
  - has been found to have committed the acts described in (i), (ii), (iii), (iv) or (vi) above.

As mentioned in paragraph 16, the MA may, where considers it appropriate, conduct a face-to-face meeting with a proposed candidate for appointment as an executive officer.

- 26. In addition, the MA will take into account any relevant decision by and information from the SFC and other financial regulators, whether in Hong Kong and elsewhere.
- 27. With regard to whether the person has sufficient authority, the general concept is that an executive officer should be the highest ranking staff member (according to the institution's internal ranking) among those engaging in the regulated activity within the registered institution. The MA will also take into account the size of the institution, the significance of the regulated activity in relation to the overall business of the institution, the management structure of the institution and the reporting line of the person in determining whether the person does in fact have sufficient authority for the purpose.

### Controllers

- 28. Controllers may hold a wide variety of positions in relation to an authorized institution, and can exert significant influence on the business decisions of the institution. Accordingly, the fit and proper criteria are also applicable to them. A key consideration is the likely or actual impact on the interests of depositors and potential depositors of a person holding his particular position as controller. This is viewed in the context of the circumstances of the individual case, and of the particular position held. The general presumption is that the greater the influence on the authorized institution, the higher the standard will be for the controller to fulfil the criterion.
- 29. Paragraph 4 of the Schedule provides that the MA must be satisfied with respect to the fitness and propriety of the controller of an authorized institution incorporated in Hong Kong. The MA also has a statutory responsibility to approve such controllers under section 70 of the Ordinance. No such approval under section 70 is required in respect of the controller(s) of an institution incorporated outside Hong Kong. However, in applying the authorization criteria, the MA must satisfy himself that such



persons are fit and proper under Paragraph 5 of the Schedule. In doing so, the MA will rely heavily on the views of the home supervisor, but also reserves the right to take into account any other information that may be available to him.

30. In satisfying himself with respect to a controller, the MA will first consider what influence the person has, or is likely to have, on the conduct of the affairs of the institution. If the person does, or is likely to, exercise close control over the business, the MA would look for evidence that he has the knowledge and experience, competence, soundness of judgment and diligence required for running an authorized institution. The MA would look therefore for the same range of qualities and experience that he would expect of the executive directors of an authorized institution. On the other hand, if the controller does not, and is not likely to, influence the directors and management of the authorized institution in relation to the day to day conduct of the business, it would not be necessary to require such a level of relevant qualities and experience. In considering the degree of influence exercised by the controller, the size of the relevant shareholding in the institution will be taken into account.
31. Secondly, the MA will consider the probity of the person as he would in the case of directors and chief executives. The MA will also have regard to whether there could be conflicts of interest arising from the influence of the controller on the authorized institution.
32. Thirdly, prospective majority (and, if appropriate, minority) shareholder controllers will be required to submit clear and detailed indications of their intentions or plans for the institution concerned, so that the suitability of those plans and the capacity of the applicant to fulfil them can be considered, having regard to its track record in holding similar or other relevant positions and its financial capacity to undertake such plans. This may involve an evaluation of the proposed future plans for the institution and a detailed analysis of the business concerned. Applicants proposing plans which are not conducive to the long term stability and healthy development of the institutions concerned cannot be regarded as fit and proper.
33. Fourthly, the MA will consider whether the financial position, reputation or conduct of the controller could damage the authorized institution through “contagion” which undermines confidence in it. For example, if the holding company, or a major shareholder, or a company connected to that shareholder were to suffer financial problems, it could lead to a run on the authorized institution, difficulties in obtaining deposits and other funds, or difficulties in raising new equity from other shareholders or potential shareholders. Generally, the higher the shareholding, the greater the risk of “contagion” if the shareholder encounters financial difficulties. The risk of contagion is not confined to financial weakness - publicity about illegal or unethical conduct by the holding company or another member of the group or a company connected to the institution in some other way could also damage confidence in the authorized institution.
34. Finally, the MA generally expects majority and minority shareholder controllers to be able to demonstrate that their involvement in the institution concerned represents a long-term commitment to the institution concerned and that they have the willingness

and capacity to contribute additional capital if required. Majority or minority shareholder controllers whose business model involves holding the share capital of the institution for short-term investment purposes will generally not be regarded as fit and proper.

35. The MA will generally require all minority and majority shareholder controllers of an authorized institution incorporated in Hong Kong to provide a letter of comfort whereby they commit to provide capital and/or liquidity support to the institution in case of need.
36. It is generally the MA's policy that a person who holds more than 50% of the share capital of an authorized institution incorporated in Hong Kong should be a well established bank or other supervised financial institution in good standing in the financial community and with appropriate experience. In considering applications from persons who do not fulfil this requirement, the MA's primary concern will be to ensure that any risks that may be posed to the existing or proposed authorized institution by the applicant, and any other members of the corporate group of which the applicant is a member, are understood and well contained. To achieve this, the MA may impose conditions on the applicant. If the applicant is incorporated outside Hong Kong or the applicant is a locally incorporated company that is neither a financial holding company nor a subsidiary of a financial holding company<sup>1</sup>, the applicant will generally be asked to establish a holding company incorporated in Hong Kong, whose sole purpose will be to hold the shares in the existing or proposed locally incorporated authorized institution (the holding company may however conduct other business or activities if they are for the purposes of providing support to the business or activities of the existing or proposed authorized institution). This "intermediate" holding company will itself be subject to certain conditions, in addition to those imposed on the applicant and its ultimate holding company (if applicable). The conditions to be imposed will likely cover, among other things, requirements on capital adequacy, liquidity, large exposures, intra-group exposures and charges over assets, group structure, activities undertaken, risk management, fitness and propriety of directors and senior management and the submission of financial and other information to the MA.
37. The MA's approach to the ongoing supervision of financial groups which include an authorized institution incorporated in Hong Kong is set out in the SPM module on "Group-wide Approach to Supervision of Locally Incorporated Authorized Institutions" ([CS-1](#)).

#### **Paragraph 5A – adequate systems of control for appointment of managers**

38. In addition to the directors and the chief executive of an authorized institution, its senior executives also have a key role to play in maintaining the safety and soundness of the institution. There is therefore a need to ensure the fitness and propriety of the

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<sup>1</sup> "Financial holding company" means a holding company that controls a group of financial institutions engaged in financial activities such as insurance, banking and securities dealing.

senior executives of authorized institutions, who are referred to as “managers” in the Ordinance.

39. Paragraph 5A of the Schedule provides that the MA must be satisfied that an institution seeking authorization has, and will if it is authorized continue to have, adequate systems of control to ensure that each person who is, or is to be, a manager of the institution is a fit and proper person to hold the particular position which he holds or is to hold.
40. Under section 2 of the Ordinance, a “manager” means any individual (other than a director or chief executive) appointed by the authorized institution, or by a person acting for or on behalf of or by arrangement with the authorized institution, to be principally responsible, either alone or with others, for the conduct of any one or more of its affairs or business specified in the [Fourteenth Schedule](#) to the Ordinance. For an authorized institution incorporated outside Hong Kong, “affairs or business” in the definition refers to those affairs or business of the institution in Hong Kong. For a locally incorporated authorized institution, it refers to the institution’s overall operation, whether located in or outside Hong Kong.
41. The affairs or business specified in the [Fourteenth Schedule](#) for the purposes of the definition of a manager are -
  - (a) the carrying on of retail banking, private banking, corporate banking, international banking, institutional banking, treasury or any other business which is material to the authorized institution;
  - (b) the maintenance of the accounts or the accounting systems of an authorized institution;
  - (c) the maintenance of systems of control of an authorized institution, including those systems intended to manage the risks of the authorized institution;
  - (d) the maintenance of systems of control of an authorized institution to protect it against involvement in money laundering;
  - (e) the development, operation and maintenance of computer systems for an authorized institution;
  - (f) the conduct of internal audits or inspections of the authorized institution’s affairs or business; and
  - (g) the function of ensuring that an authorized institution complies with laws, regulations or guidelines that are applicable to it.
42. In determining whether an institution satisfies the requirement of Paragraph 5A, the MA will take into account, inter alia, the following factors set out in [CG-2](#) “Systems of Control for the Appointment of Managers” of the SPM -

- (a) whether the responsibilities of, and the skills, knowledge and experience required for, individual managerial positions are clearly defined and supported by up-to-date job descriptions, organisation charts and levels of authority;
  - (b) whether the institution has a set of proper procedures for selecting and appointing managers and for satisfying itself about the fitness and propriety of candidates for managerial positions at the time of appointment or recruitment. In assessing the fitness and propriety of a manager or a prospective manager, the institution should take into consideration the factors set out in paragraph 20 above, with due regard to the precise position that the person holds or is to hold;
  - (c) whether there are effective and clearly defined systems for appraising the performance of managers. Such systems should not give undue weight to financial performance (e.g. achievement of profitability or market share) but should also have regard to other factors such as compliance with internal guidelines (e.g. on control of risk) and regulatory requirements;
  - (d) whether the institution has clearly defined policies and procedures for investigating apparent breaches of internal guidelines or regulatory requirements by managers or complaints about the conduct of managers and for taking disciplinary action where this is appropriate;
  - (e) whether there are clearly defined systems for taking action in respect of, and if necessary replacing, managers whose performance is assessed as unsatisfactory;
  - (f) whether managerial vacancies are filled promptly and there are clearly defined arrangements to provide cover in the case of temporary vacancies;
  - (g) whether adequate training is provided to managers; and
  - (h) whether the systems of control in relation to the appointment of managers are subject to periodic review by the internal audit function.
43. Related to this authorization criterion, authorized institutions are required under section 72B of the Ordinance to notify the MA and the appointees of, among other things -
- (a) the date of appointment;
  - (b) particulars of the affairs or business of the institution in relation to which the person has been appointed as a manager; and
  - (c) any subsequent changes.

Such notification must be made within 14 days after the date on which a person became a manager of the institution or ceased to be a manager of the institution or any changes associated with such appointments.

## Paragraph 6 - adequate financial resources

44. Paragraph 6 provides that the MA must be satisfied that the institution presently has, and will if authorized continue to have, financial resources (whether actual or contingent) which are adequate for the nature and scale of its operations. The Hong Kong Monetary Authority (HKMA)<sup>2</sup> is a member of the Basel Committee and, in making an assessment of the financial strength of the institution, the MA will have primary regard to the adequacy of its capital measured in a way which is consistent with the latest applicable capital standards issued by the Basel Committee.
45. In the case of a locally incorporated authorized institution, Paragraph 6(d) provides that, on and after authorization, it must comply with the rules made under section 97C(1) of the Ordinance (i.e. the Banking (Capital) Rules). The Banking (Capital) Rules set out, among other things -
- (a) the minimum capital adequacy ratios (i.e. common equity tier 1 capital ratio, tier 1 capital ratio and total capital ratio), the buffer level (i.e. the sum of capital conservation buffer ratio, countercyclical capital buffer ratio and, if applicable, higher loss absorbency ratio), and the minimum leverage ratio applicable to a locally incorporated authorized institution;
  - (b) the constraints on distribution to which an institution will be subject if it operates within the buffer zone;
  - (c) items that can be included as capital for the purposes of calculating an institution's actual capital adequacy ratios and buffer level;
  - (d) the manner in which the countercyclical capital buffer ratio applicable to an institution should be determined; and
  - (e) various approaches for authorized institutions to calculate their capital requirements for credit risk, market risk and operational risk.
46. The MA may require an authorized institution with one or more than one subsidiary to comply with the minimum capital adequacy ratios, the buffer level, and the minimum leverage ratio on a consolidated basis, in addition to a solo or solo-consolidated basis.
47. The Banking (Capital) Rules are supplemented by a number of guidelines which elaborate upon the MA's approach towards capital adequacy, including principally the following SPM modules -
- (a) "Overview of Capital Adequacy Regime for Locally Incorporated Authorized Institutions" ([CA-G-1](#));
  - (b) "Use of Internal Models Approach to Calculate Market Risk" ([CA-G-3](#));

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<sup>2</sup> The MA heads an Office known as the "Hong Kong Monetary Authority" of which he is the Chief Executive.

- (c) “Validating Risk Rating Systems under the IRB Approaches” ([CA-G-4](#));
  - (d) “Supervisory Review Process” ([CA-G-5](#));
  - (e) “Countercyclical Capital Buffer (CCyB) – Approach to its Implementation” ([CA-B-1](#));
  - (f) “Systemically Important Banks” ([CA-B-2](#)); and
  - (g) “Countercyclical Capital Buffer (CCyB) – Geographic Allocation of Private Sector Credit Exposures” ([CA-B-3](#)).
48. The MA expects authorized institutions to have an internal process for assessing their overall capital adequacy (CAAP) in relation to their risk profile and a strategy for maintaining the required level of capital. The supervisory standards for an authorized institution’s CAAP are set out in CA-G-5 of the SPM. In the MA’s Supervisory Review Process (this is in essence a Pillar 2 process as described in the Basel Committee’s capital standards), the MA will evaluate an authorized institution’s CAAP, assess to what extent the authorized institution has risk not captured, or not adequately captured, by the calculations made under the Banking (Capital) Rules (i.e. the Pillar 1 capital requirements under the Basel capital framework), and determine the Pillar 2 capital requirement of the authorized institution.
49. As a general principle, to the extent that the Pillar 2 capital requirement generated from the Supervisory Review Process reflects institution-specific risks not covered, or not adequately covered, under Pillar 1, it constitutes P2A, and this portion of the Pillar 2 capital requirement is a constituent part of the minimum capital adequacy ratios set by the MA pursuant to section 97F of the Ordinance. To the extent that the Pillar 2 capital requirement generated from the Supervisory Review Process reflects a cushion of capital to bolster resilience generally without reference to a specific Pillar 2 risk, it constitutes P2B, by reference to which any need for a higher buffer level over and above the buffer level applicable to the authorized institution under section 3G of the Banking (Capital) Rules will be determined.
50. In general, where a locally incorporated institution fails to meet any of the minimum capital adequacy ratios and the minimum leverage ratio set for it, this will call into question whether the criterion in Paragraph 6 is satisfied with respect to that institution. The initial reaction of the MA in such cases will be to enter into discussions with the institution to seek remedial action as required by the Ordinance, such as the injection of additional capital by shareholders. Where such remedial action is not forthcoming, the MA will consider taking further action against the institution including, ultimately, revocation of the institution’s authorization. In considering whether to revoke an institution’s authorization, the MA will have primary regard to the need to maintain the stability of the banking system and to protect the interests of depositors and potential depositors of the institution.
51. Even if all minimum capital adequacy ratios and the minimum leverage ratio are met by an institution at a particular time, this may not of itself mean that the MA will be satisfied that the institution has adequate financial resources. The assessment to be

made by the MA must be forward looking and take into account the extent to which the institution's capital adequacy may be overstated due to inadequacy of provisions for bad and doubtful debts or may come under threat from a future deterioration in asset quality, excessive business risks or anticipated losses.

52. The MA will take account of the ability and willingness of shareholders to provide additional financial support to the institution, in the form of capital and/or liquidity injections, should that prove necessary. As already noted, the MA will generally require the commitment to support to be embodied in a letter of comfort to be provided by the minority and majority shareholder controllers of the institution concerned.
53. An authorized institution should have internal capital targets (to be agreed with the HKMA) and monitoring tools in place. It should in a timely manner discuss with the MA if its capital level falls close to the buffer level applicable to it.
54. In addition to meeting capital requirements, authorized institutions are required under Paragraph 6(a)-(c) of the Schedule to maintain minimum levels of share capital (including paid-up share capital and balance of share premium account). The levels required, which are subject to variation, are currently set at HK\$300 million for banks, HK\$100 million for RLBs and HK\$25 million for DTCs. In respect of institutions incorporated outside Hong Kong, the requirement applies to the institution as a whole.
55. In the case of an institution incorporated outside Hong Kong, the primary responsibility for supervising capital adequacy rests with the home supervisor. In arriving at his own assessment of the financial strength of an overseas institution, the MA will take the views of the home supervisor into account but may also wish to make his own independent assessment, taking into account for example whether the institution in question is state-owned. The applicant will normally be expected to submit its CAAP and results of the most recent assessment<sup>3</sup> of its capital adequacy under different stress scenarios, together with the basis of the assessment. If such information cannot be provided, reasons should be given. The MA will generally require an overseas bank which wishes to set up a branch or a subsidiary in Hong Kong to maintain capital levels consistent with the latest applicable capital standards issued by the Basel Committee. The MA will generally accept calculations of the capital requirements which are based on the methodology of the home supervisor provided that this is consistent with the various national discretions allowed under the Basel Committee's capital standards. However, the MA also reserves the right to require capital requirements to be recalculated on the basis of the methodology used in Hong Kong to check that they are not over-stated.
56. The MA, in making an assessment of the financial strength of an authorized institution, will have regard to the adequacy of the loss-absorbing capacity of the institution, which may facilitate loss-absorption and recapitalisation of the institution in an orderly manner using stabilization options provided for under the Financial Institutions (Resolution) Ordinance (FIRO) (Cap. 628) in the event of its failure. All

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<sup>3</sup> In any event, the assessment should reflect the position not more than 3 months before the date of submission.

authorized institutions must comply with any loss-absorbing capacity requirements, as applicable, specified by the MA under rules made as subsidiary legislation under the FIRO.

### **Paragraph 7 - requirement for adequate liquidity**

57. Paragraph 7(a) provides that the MA must be satisfied that the institution presently maintains, and will if authorized continue to maintain, adequate liquidity to meet its obligations as they will or may fall due. Paragraph 7(b), which serves to complement Paragraph 7(a), provides that the MA must be satisfied that the institution will, on and after authorization, comply with the rules made under section 97H(1) of the Ordinance (i.e. the Banking (Liquidity) Rules). The Banking (Liquidity) Rules contain the liquidity requirements applicable to authorized institutions<sup>4</sup>. These include, among other things -

- (a) the provisions for designation of an authorized institution by the MA as a “category 1 institution”, which is subject to the requirements of the Rules in relation to the Liquidity Coverage Ratio (LCR) and Net Stable Funding Ratio (NSFR)<sup>5</sup>. Other authorized institutions not designated as category 1 institutions (i.e. “category 2 institutions”) are subject to the requirements of the Rules in relation to the Liquidity Maintenance Ratio (LMR);<sup>6</sup>
- (b) the provisions for designation of a category 2 institution by the MA as a “category 2A institution”, which is subject to the requirements of the Rules in relation to the Core Funding Ratio (CFR) in addition to the LMR;
- (c) the minimum required levels of the four liquidity ratios, namely, LCR, LMR, NSFR and CFR and the methodologies for their calculation; and
- (d) pursuant to section 97I of the Ordinance, the prescribed notification requirement with which an authorized institution must comply upon the occurrence of any “relevant liquidity event” set out in the Rules for immediate reporting to the MA, and actions that may be taken by the MA when notified of such an event.

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<sup>4</sup> LM-1 “Regulatory Framework for Supervision of Liquidity Risk” of the SPM provides guidance on the application of the Banking (Liquidity) Rules.

<sup>5</sup> The LCR and the NSFR are two quantitative metrics introduced by the Basel Committee as minimum international standards for liquidity management and supervision. The NSFR is scheduled to be implemented on 1 January 2018 according to the timeline set by the Basel Committee.

<sup>6</sup> Category 1 institutions are typically those institutions that are internationally active or are significant to the general stability of the Hong Kong banking system, whereas category 2 institutions are generally those institutions with relatively small, simple and localised operations.



58. Pursuant to section 97M of the Ordinance, the MA has issued a code of practice for the purposes of providing guidance on the calculation of “total net cash outflows” (denominator of LCR), under the Banking (Liquidity) Rules.<sup>7</sup>
59. The requirements relating to the four liquidity ratios may apply to an authorized institution incorporated in Hong Kong on an unconsolidated basis, a consolidated basis or both, in addition to the Hong Kong office basis that is applicable to all authorized institutions irrespective of their place of incorporation.
60. Under section 97K of the Ordinance, the MA may vary any statutory liquidity requirement rule (including, among others, the minimum required level of any of the four liquidity ratios) for individual authorized institutions, taking into account the liquidity risks associated with the institutions.
61. In arriving at an assessment of the adequacy of liquidity, the MA will further take into account the adequacy of the institution’s liquidity risk management, having regard to its compliance with the relevant standards set out in [LM-2](#) “Sound Systems and Controls for Liquidity Risk Management” of the SPM, which align with those in the *Principles for Sound Liquidity Risk Management and Supervision* issued by the Basel Committee in September 2008. This is because the level of liquidity an authorized institution should maintain (not only for meeting minimum regulatory standards) also depends on the liquidity risks faced by the institution and the adequacy of its systems and controls to manage those risks.
62. While recognising that the liquidity risk management systems of authorized institutions may vary in terms of their structure and their degree of sophistication, the MA considers that there are common elements contributing to a sound liquidity risk management framework, including the articulation of a clear liquidity risk tolerance, a comprehensive approach to management, identification, measurement and control of the full range of liquidity risks to which the institution is exposed, appropriate funding strategies and internal risk process together with viable operational contingency funding plans. The framework should be commensurate with the nature, scale and complexity of the authorized institution’s business activities.
63. Authorized institutions are expected to adopt a cash-flow approach to managing their liquidity risks. This approach complements the minimum liquidity requirements in the Banking (Liquidity) Rules by requiring authorized institutions to measure, monitor and control their cash-flow and maturity mismatch positions within various time bands under different operating conditions. Authorized institutions should have in place appropriate systems and procedures for monitoring net funding requirements on a daily basis under normal business conditions; conducting regular cash-flow analyses based on a range of stress scenarios; and developing reasonable assumptions for making these cash-flow projections. In order to stay in business, authorized institutions need to ensure that either a positive cash-flow position is maintained or

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<sup>7</sup> The code of practice refers to *the Banking (Liquidity Coverage Ratio – Calculation of Total Net Cash Outflows) Code* published by the MA in the Gazette on 24 December 2014.

otherwise sufficient cash can be generated from their assets or funding sources to satisfy their funding requirements on a daily basis.

64. The MA will, in particular, assess an authorized institution's ability to maintain adequate liquidity in the event of liquidity stress. For this purpose, the MA will review the adequacy of liquidity cushion<sup>8</sup> maintained by the authorized institution; the stress tests carried out by the authorized institution; and the stability of the authorized institution's funding sources and the viability of its contingency funding plans.
65. Each authorized institution is expected to formulate a liquidity risk tolerance and a statement of its liquidity management policy, taking into account the factors described above. This policy statement should be properly documented, approved by the board of directors, and be subject to regular review (at least annually) by the board to ensure that it remains valid under changing circumstances. According to the nature of business of an authorized institution, the policy statement should cover, at a minimum, the liquidity risk tolerance set by the board, the liquidity risk management strategy, the liquidity risk governance and management systems and the institution's contingency plan for dealing with various types of liquidity crisis. Authorized institutions will be expected to formulate liquidity policies and strategies for the currencies in which they have significant exposure.
66. The policy statement of a locally incorporated authorized institution should cover both its local and overseas operations as well as all related entities that may have a significant impact on its liquidity. If the authorized institution manages liquidity on a group basis, the policy statement should address issues relevant to the authorized institution and the group as a whole.
67. Regardless of whether liquidity risk management is centralised at the head office, authorized institutions which are branches of banks incorporated outside Hong Kong should still formulate a policy statement for their Hong Kong operations. It should, in particular, include the line of responsibility for monitoring the liquidity in Hong Kong and the reporting arrangements to head office. In the case of authorized institutions which are branches or subsidiaries of foreign banks, their liquidity risks may be managed on an integrated global basis. Given that local liquidity risk management capabilities are important in ensuring the overall resilience and robustness of cross-border banking groups, the MA generally expects such authorized institutions to be able to comply with the liquidity risk management standards in [LM-2](#) in all major aspects, including the maintenance of adequate liquidity resources in Hong Kong to cater for the liquidity risks they face. They will however be allowed to adapt their group liquidity risk management framework to their Hong Kong operations to comply with the standards.
68. A failure by an authorized institution to meet liquidity requirements prescribed in the Banking (Liquidity) Rules (in particular the minimum level of liquidity required for the LCR or LMR) or other evidence of imprudent management of liquidity, would call

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<sup>8</sup> The requirement in respect of the maintenance of a liquidity cushion by each authorized institution is set out in section 8 of LM-2.

into question whether the criterion in Paragraph 7 was satisfied with respect to that institution. The initial reaction of the MA in such cases will normally be a prompt discussion with the institution to seek remedial action (which in the case of a failure to meet any statutory liquidity requirement rule is provided for under section 97J of the Ordinance). Where such remedial action is not forthcoming, the MA will consider taking further action against the institution, including ultimately revocation of the institution's authorization. In determining such further action to be taken, the MA would have primary regard to the need to maintain the stability of the banking system and to protect the interests of depositors or potential depositors of the institution.

69. In assessing the overall liquidity of an institution incorporated outside Hong Kong (other than in respect of its business in Hong Kong), the MA will have regard to the views of the home supervisor as well as taking account of any other information which may be available to him.

### **Paragraph 8 - adequate control of large exposures**

70. Paragraph 8 provides that the MA must be satisfied that the institution will, on and after authorization, comply with Part XV of the Ordinance, where it is applicable to it. The MA has issued a number of policy guidelines contained within the SPM to provide guidance to authorized institutions on how he proposes to exercise his powers and discretion under this Part of the Ordinance. These include [CR-G-8](#) "Large Exposures and Risk Concentrations", [CR-G-9](#) "Exposures to Connected Parties" and a series of CR-L modules in relation to limitations on credit exposures under Part XV.
71. Part XV sets out limitations on exposures and concentration of risks of authorized institutions. Briefly, it covers the following -
- (a) lending against the security of the shares of the authorized institution or its related companies (section 80);
  - (b) limitation on exposures to a customer or a group of related customers (section 81);
  - (c) power of the MA to publish guidelines on business practices which should not be engaged in by authorized institutions (section 82);
  - (d) limitation on exposures to directors and connected persons and companies and businesses related to them (section 83);
  - (e) limitation on advances to employees (section 85);
  - (f) powers of the MA in relation to moneys placed with a foreign bank by an authorized institution (section 86);
  - (g) limitation on holding of shares (section 87);

- (h) acquisition by authorized institutions incorporated in Hong Kong of share capital in companies equal to or exceeding 5% of the capital base of the institution (section 87A);
- (i) limitation on holding of interest in land (section 88);
- (j) limitation on aggregate holdings under sections 83, 87 and 88 (section 90); and
- (k) proof of compliance with sections 80, 81, 83, 85, 86, 87, 88 or 90 (section 91).

In the case of an authorized institution incorporated outside Hong Kong, section 79(4) provides that sections 80, 82, 85, 86 and, where relevant, section 91, shall apply only to the Hong Kong operations of such an institution.

72. In considering an application for authorization, the MA will wish to satisfy himself that the institution has the necessary control systems to guard against concentration risks and to ensure that the limits specified in Part XV of the Ordinance will not be exceeded. In addition, he expects that every locally incorporated institution should establish a policy on the control of large exposures and risk concentration and set an internal clustering limit to control the aggregate of its large exposures which are not exempted under section 81 of the Ordinance (see [CR-G-8](#) “Large Exposures and Risk Concentrations” of the SPM for details).
73. Section 79A of the Ordinance empowers the MA to require authorized institutions incorporated in Hong Kong to comply with the statutory limits under Part XV on both an unconsolidated and consolidated basis. The MA has discretion to decide which subsidiaries of an authorized institution are to be included in the consolidation. As a general rule, consolidation for the purposes of this section will include subsidiaries which undertake financial business and those which incur risks regulated by Part XV (see [CR-L-1](#) “Consolidated Supervision of Concentration Risks under Part XV: s.79A” of the SPM for details).
74. In general, section 81 of the Ordinance limits the exposure to an individual customer or group of connected customers to not more than 25% of the capital base of an authorized institution incorporated in Hong Kong. This limit may however be exceeded where, inter alia, the exposure is secured by a cash deposit, a guarantee or another undertaking which in the opinion of the MA is similar to a guarantee or covered by a letter of comfort. The conditions for the above exemptions are set out in [CR-L-2](#) “Exemption of Financial Exposures: s.81(6)(b)(i)” and [CR-L-3](#) “Letters of Comfort: s.81(6)(b)(ii)” of the SPM.
75. It should be noted that the HKMA plans to implement the new Basel large exposures framework to replace the current section 81 of the Ordinance starting from 1 January 2019.

## Paragraph 9 - requirement to maintain adequate provisions

76. Paragraph 9 provides that the MA must be satisfied that an institution presently maintains, and will if authorized continue to maintain, adequate provision for depreciation or diminution in the value of its assets (including provision for bad and doubtful debts), for liabilities which will or may fall to be discharged by it and for losses which will or may occur. Hence, provisions should be made for, inter alia, bad and doubtful debts, expected losses on contingent liabilities (such as guarantees or other off-balance sheet exposures), and tax liabilities. The MA regards the accurate valuation of assets and the establishment of adequate provisions as being of fundamental importance. It is management's responsibility to ensure that the necessary systems are in place to achieve these objectives.
77. In assessing the adequacy of an institution's provisions through on-site examinations or off-site analysis, the MA has regard to, inter alia, the nature and volume of the asset portfolio including concentration of risks; systems for credit assessment, approval and monitoring; the policies and procedures for identifying bad debts and determining the appropriate level of provisions; the frequency with which provisions are reviewed; the policy and practices for the taking, and valuation of, security; and the extent to which valuation exceeds the balance sheet value of such security.
78. As set out in [CR-G-1](#) "General Principles of Credit Risk Management", [CR-G-2](#) "Credit Approval, Review and Records" and [CR-G-3](#) "Credit Administration, Measurement and Monitoring" of the SPM, the MA expects every authorized institution to have systems in place for periodic review of its asset quality and adequacy of provisions. In addition to their accounting provisions determined in accordance with International Financial Reporting Standards, the MA requires authorized institutions incorporated in Hong Kong to maintain a non-distributable regulatory reserve. The reserve was originally designed to cover to a certain extent losses which may be expected but which are not yet incurred and thereby to address limitations identified with International Accounting Standard 39 (IAS39). Notwithstanding the latest revision of the impairment requirements to a more forward looking approach<sup>9</sup> by the International Accounting Standards Board, the MA will retain the regulatory reserve, subject to further review based on the future international developments of the regulatory treatment of expected loss provisioning. The MA periodically reviews the level of the regulatory reserve in the light of individual authorized institutions' circumstances.
79. In line with the international practices adopted by many overseas supervisors, the MA expects every institution to have in place an adequate country risk management system which is commensurate with the size, nature and complexity of its cross-border exposures. Adequate provisions against country risk should also be made. [CR-G-5](#) "Country Risk Management" of the SPM sets out the MA's expectations in this respect.

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<sup>9</sup> Effective from 1 January 2018, IAS39 was replaced by International Financial Reporting Standard 9 which requires the recognition of expected credit losses on financial assets and commitments to extend credit.

80. As one means of assessing the quality of loans and the adequacy of provisions, the MA has introduced a standard loan classification system which forms the basis of quarterly reports by every authorized institution to the MA. The description of the MA's approach in this area is given in a number of guidelines and circulars (e.g. a guideline on "[Loan Classification System](#)" contained within the circular issued in May 1999 on "[Amendments to the Quarterly Analysis of Loans and Advances and Provisions](#)" and a circular on "[Loan Classification and Provisioning](#)" issued in November 1999).
81. In forming a view about the overall adequacy of the provisions of an institution which is incorporated outside Hong Kong (other than in respect of its business in Hong Kong), the MA will have regard to the views of the home supervisor as well as taking account of any other information which may be available to him.

**Paragraph 10 - requirement to maintain adequate accounting systems and adequate systems of control**

82. Paragraph 10 provides that the MA must be satisfied that the institution presently has, and will if authorized continue to have, adequate accounting systems and adequate systems of control. These are essential for ensuring the prudent and efficient running of the institution's business, safeguarding its assets, minimising the risk of fraud, monitoring the risks to which the institution is exposed and complying with legislative and regulatory requirements. In assessing whether an institution's records and systems are adequate, the MA has regard to the nature, scale and complexity of its operations, the volume of transactions undertaken, its structure and organisation, and the geographical distribution of the business. The MA's expectations of the general objectives and major components of internal control systems in respect of risk management are set out in [IC-1](#) "Risk Management Framework" of the SPM. The sound practices contained in [IC-1](#) are also applicable to a sound remuneration system and are reflected in the SPM module on "Guideline on a Sound Remuneration System" ([CG-5](#)). [IC-1](#) is also supplemented by other SPM modules that provide guidance on internal controls for specific types of risk or business activities (e.g. [CR-G-12](#) "Credit Risk Transfer Activities").
83. The MA expects an authorized institution to put in place and maintain adequate management information systems and adequate systems of control with a view to providing the MA with timely information with respect to its Hong Kong operations as required for resolution planning as well as managing an orderly failure of the institution. The MA's core information requirements for resolution planning for authorized institutions are set out in the Code of Practice chapter on "Resolution Planning – Core Information Requirements" ([CI-1](#)) issued pursuant to the FIRO.
84. An internal audit function is essential to the maintenance of adequate internal control systems, providing the board and senior management of an authorized institution with an independent, objective evaluation of the condition of the institution's systems and controls and identifying weaknesses to be rectified. The MA therefore expects every authorized institution to maintain an internal audit function that is appropriate for the size, nature, scope and complexity of the institution's operations. The MA's

expectations on the key role, responsibilities and qualities of an institution's internal audit function, and its approach in assessing the effectiveness of the function, are set out in the SPM module on "Internal Audit Function" ([IC-2](#)).

85. Every authorized institution is also subject to examination of the adequacy of its accounting systems and internal control systems by either the MA's own bank examiners or the institution's external auditors. "Adequacy" in this context covers both the existence of records and controls and whether they are working effectively.
86. As described in Chapter 3, reports by external auditors may be recurrent in nature or ad hoc. Under section 63(3) and 63(3A) of the Ordinance, the MA requires auditors' reports to be submitted on an annual basis covering the following areas -
- (a) the accuracy of prudential returns or other information;
  - (b) controls relating to the compilation of prudential returns or other information;
  - (c) controls which enable compliance with statutory provisions in the Ordinance; and
  - (d) for institutions incorporated in Hong Kong, controls to enable the maintenance of adequate provisions.
87. In addition, the MA has the power under section 59(2) of the Ordinance to require auditors' reports to be submitted on an ad hoc basis covering matters which are relevant to the exercise of his functions under the Ordinance. This would include aspects of internal control such as the following -
- (a) high level controls;
  - (b) controls relating to the financial accounting and management reporting systems;
  - (c) specific controls relating to particular areas of institutions' business operations (such as loans and advances, internet banking etc.);
  - (d) computer controls;
  - (e) contingency planning; and
  - (f) controls to prevent money laundering and terrorist financing.

Guidance in respect of external auditors' reporting obligations under the Ordinance is laid down in the SPM module on "Reporting Requirements Relating to Authorized Institutions' External Auditors under the Banking Ordinance" ([IC-3](#)).

88. The MA attaches particular importance to the maintenance of effective and risk-based internal controls to combat money laundering and terrorist financing. Such controls are necessary to maintain confidence in both individual banks and the system as a

whole and to protect the reputation of Hong Kong as an international financial centre. Prevention of money laundering and terrorist financing is the subject of regular discussion with authorized institutions and their external auditors. The MA has issued a [Guideline on Anti-Money Laundering and Counter-Terrorist Financing \(For Authorized Institutions\)](#) to provide practical guidance to assist authorized institutions and their senior management in designing and implementing their policies, procedures and controls to meet the relevant statutory and regulatory requirements, including but not limited to those under the [Anti-Money Laundering and Counter-Terrorist Financing \(Financial Institutions\) Ordinance](#). In addition, focused examinations are conducted on authorized institutions to assess the adequacy of their controls in this area. In considering an application for authorization from an institution incorporated overseas, the MA will take into account whether the home jurisdiction of the applicant is identified by the Financial Action Task Force (FATF) in public statements as one of the jurisdictions that have strategic deficiencies in their anti-money laundering and counter-terrorist financing regimes or one of the countries that do not, or insufficiently, apply the FATF Recommendations.

89. In the light of the involvement of a growing number of institutions in the trading of securities and derivatives and the conduct of insurance and MPF intermediary activities, it is also essential that senior management has a full understanding of the nature of these activities and that there are comprehensive risk management systems to control them. It is particularly important that adequate controls such as segregation of duties and responsibilities between the business units and the risk management and settlement functions are in place and are working effectively. Failure to ensure this will reflect badly on the directors and senior management of the institution concerned. The MA has set up special teams to conduct focused examinations on authorized institutions in these areas. Moreover, there should be effective systems of control to ensure compliance with the relevant regulations and minimum standards that the MA expects authorized institutions to adopt, including but not limited to margin and other risk mitigation techniques set out in the SPM module on “Non-centrally Cleared OTC Derivatives Transactions – Margin and Other Risk Mitigation Standards” ([CR-G-14](#)) and those under the SFO<sup>10</sup>.
90. Authorized institutions which want to operate their Hong Kong offices as a booking centre for derivative trades conducted in Hong Kong or elsewhere should discuss their plans with the MA in advance. In assessing an authorized institution’s plan, the MA will take into account whether the authorized institution has in place adequate and effective systems and controls to manage the risks arising from the activities. These include, but are not limited to, an appropriate risk governance framework, effective risk limits, proper policies and procedures, and adequate risk management capabilities. Institutions which wish to adopt internal models for calculating regulatory capital charges are required to seek prior approval of the MA under the Banking (Capital) Rules.

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<sup>10</sup> For instance, in respect of OTC derivative transactions, there should be effective systems of control to ensure compliance with the applicable mandatory reporting, clearing, trading and the related record keeping obligations.



91. It is the requirement of the MA that authorized institutions undertaking wealth management or private banking business should record the activities and positions of their customers in Hong Kong, including transactions undertaken by the customers, their holdings of assets and deposits, as well as credit facilities granted to them. This is to ensure that the MA has adequate and timely access to all relevant information to enable him to perform his functions under the Ordinance. There may however be cases where the positions of some customers of an institution are recorded in the books of an office of the institution or of its group company outside Hong Kong because of, say, customer preference. In such cases, the institution should satisfy the MA that he will have adequate and timely access to any such records which are necessary for the performance of his functions.
92. Overseas operations add to the complexities of an institution's business structure and control. The MA therefore requires to be notified where an authorized institution incorporated in Hong Kong proposes to establish an overseas branch, representative office or banking subsidiary. Under sections 49 and 51A of the Ordinance, the approval of the MA must be obtained for such establishments. [CG-4](#) "Establishment of Overseas Banking Subsidiaries: S51A" of the SPM sets out the MA's expectations and requirements in this area. The MA will need to be satisfied, inter alia, as to the financial capacity of the parent bank to acquire the overseas subsidiary, the adequacy of control by the parent bank over the management of the overseas operation and the adequacy of the internal control systems to be established within that overseas operation.
93. In assessing the overall adequacy of the accounting records and control systems of an institution which is incorporated outside Hong Kong (other than in respect of its business in Hong Kong), the MA will have regard to the views of the home supervisor as well as taking account of any other information which may be available to him.

#### **Paragraph 11 - requirement to make adequate disclosure of information**

94. In relation to an institution incorporated in Hong Kong, Paragraph 11 provides that the MA must be satisfied that it presently discloses, and will if authorized continue to disclose, adequate information about the state of its affairs, including its profit and loss and its financial resources (including capital resources and liquidity resources) and in its audited annual accounts and in other parts of its annual report.
95. The Banking (Disclosure) Rules set out the minimum standards for public disclosures which authorized institutions must make in respect of their state of affairs, including their profit and loss and financial resources (including capital resources and liquidity resources). The rules apply to both Hong Kong incorporated institutions (including those that are subsidiaries of foreign banks) and overseas incorporated authorized institutions, except for those institutions that fall within the exemption criteria (generally for small RLBs and DTCs) as specified in Part 1 of the Rules. The MA's approach to the implementation of certain sections of the Banking (Disclosure) Rules is set out in the SPM module on "Guideline on the Application of the Banking (Disclosure) Rules" ([CA-D-1](#)) and other relevant supervisory guidance.

96. While Paragraph 11 relates specifically to annual account disclosure by locally incorporated authorized institutions, the MA also expects adequate financial disclosure to be made by the larger authorized institutions incorporated outside Hong Kong in accordance with the relevant standards set out in the Banking (Disclosure) Rules.

### **Paragraph 12 - business to be conducted with integrity, prudence and competence**

97. Paragraph 12 provides that the MA must be satisfied that the business (which includes any business that is not banking business or the business of taking deposits) of the institution is presently, and will if authorized continue to be, carried on with integrity, prudence and the appropriate degree of professional competence and in a manner which is not detrimental to the interests of depositors or potential depositors.
98. In considering whether an institution is conducting its business prudently and with competence, the MA will have regard to its compliance with other prudential requirements set out in other parts of this Guideline. The MA will also take account of other considerations including -
- (a) the institution's general strategy and objectives and its ability to plan ahead;
  - (b) the institution's track record, including its ability to deal with external shocks and unexpected contingencies;
  - (c) the general level of competence associated with the institution as demonstrated, for example, in its resistance to internal and external fraud and avoidance of operational errors;
  - (d) the institution's general reputation and standing in the financial community;
  - (e) the quality of the institution's staff and management, including recruitment and training arrangements and institution's compliance with the requirements in the SPM module on "Competence and Ethical Behaviour" ([CG-6](#)); and
  - (f) the quality of the institution's computer systems.
99. In considering whether an institution is conducting its business with prudence and competence, the MA may have regard to the extent to which the institution is structured and operates in such a way under normal circumstances that it is feasible and credible for its failure to be handled in an orderly manner. For this purpose, the MA may take into account, among other things –
- (a) the nature (including the complexity) and scale of activities that an institution carries on or seeks to carry on;
  - (b) the risks to the continuity of the services provided or to be provided;

- (c) the effect that the disruption to the continued performance of such functions and activities might be expected to have on the stability and effective working of the financial system of Hong Kong; and
  - (d) the institution's preparation and planning with a view to enabling its failure, if any, to be handled in an orderly manner, either in or outside resolution.
100. Integrity is concerned with the manner in which the business of the institution is carried on and is distinct from the question of whether its directors, controllers, chief executives and executive officers are fit and proper persons. The institution must observe high ethical standards in carrying on its business. Institutions are expected to develop and promote a sound corporate culture that supports prudent risk management and contributes towards incentivising proper staff behaviour leading to positive customer outcomes and high ethical standards in the banking industry. Criminal offences or other breaches of law will obviously call into question the fulfillment of this criterion. Particularly relevant are contraventions of any provision made by or under enactments designed to protect members of the public against financial loss due to dishonesty, incompetence or malpractice. Doubts may also be raised if the institution fails to comply with recognised ethical standards of conduct such as those embodied in various codes of conduct (e.g. the Code of Banking Practice ([http://www.hkma.gov.hk/media/eng/doc/code\\_eng.pdf](http://www.hkma.gov.hk/media/eng/doc/code_eng.pdf)) issued jointly by the Hong Kong Association of Banks and The DTC Association and endorsed by the HKMA) and the Treat Customers Fairly Charter (TCF Charter)<sup>11</sup>. In considering what action to take in respect of a breach of statute or of a code of conduct, the MA would have regard to the seriousness of the breach, whether the breach was deliberate or an unintentional or unusual occurrence, and whether it could be detrimental to the interests of depositors or potential depositors.

### **Paragraph 13 - other criteria**

101. Unlike the other criteria in the Schedule, the following criteria apply only to an institution incorporated outside Hong Kong applying for a banking licence and need only be satisfied at the time of authorization -
- (a) there is, in the opinion for the MA, an acceptable degree of reciprocity in respect of banks incorporated in Hong Kong seeking to carry on banking business in the place where the institution is incorporated; or
  - (b) that place is, or is part of the territory of, a member of the World Trade Organization.

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<sup>11</sup> The TCF Charter ([http://www.hkma.gov.hk/media/eng/doc/key-functions/banking-stability/consumer-corner/TCF\\_Charter.pdf](http://www.hkma.gov.hk/media/eng/doc/key-functions/banking-stability/consumer-corner/TCF_Charter.pdf)) was signed by all the retail banks in Hong Kong on 28 October 2013. It reflects the good practices promoted under the G20 High-Level Principles on Financial Consumer Protection promulgated in October 2011.

### **Conditions on authorization**

102. Under sections 16(1)(a) and 16(5) of the Ordinance, the MA may, by notice served on an authorized institution, attach to its authorization such conditions as he may think proper. Section 16(9) of the Ordinance specifically provides that the MA may attach conditions which impose restrictions on the institution's banking business or business of taking deposits or requirements in relation to the institution's audited annual accounts.
103. The authorization of banks is subject to the condition that they will become a member of the Hong Kong Association of Banks and thereafter, in accordance with and subject to the provisions of section 7(1) of the Hong Kong Association of Banks Ordinance, remain a member of the Association.
104. In addition, the authorization of authorized institutions is subject to the condition that they will become a member of the Financial Dispute Resolution Scheme (the Scheme) administered by the Financial Dispute Resolution Centre and will remain a member unless and until their authorization is revoked under section 22 of the Ordinance and that they will be required to abide at all times whilst being a member of the Scheme by the rules and procedures in respect of the Scheme as amended from time to time.

### **Consultation prior to imposing a condition**

105. Conditions under section 16 of the Ordinance may be attached to a particular institution, a class of institutions, or to each institution. Section 134A of the Ordinance provides that before attaching any condition to the authorization of any authorized institution, the MA shall -
  - (a) where the condition is attached to the authorization of each authorized institution, consult the Banking Advisory Committee and Deposit-taking Companies Advisory Committee, The Hong Kong Association of Banks and The DTC Association;
  - (b) where the condition is attached to the authorization of each bank or a class of banks, consult the Banking Advisory Committee and The Hong Kong Association of Banks, or each such institution;
  - (c) where the condition is imposed on each RLB or DTC or a class of RLBs or DTCs, consult the Deposit-taking Companies Advisory Committee and The DTC Association, or each such institution; and
  - (d) where the condition is imposed on a particular authorized institution, give that institution an opportunity of being heard within a reasonable period.

## **Appeals to the Chief Executive in Council**

106. Under section 132A(1) of the Ordinance, any institution aggrieved by the refusal of the MA to authorize it or by the attachment by the MA of any conditions to its authorization may appeal to the Chief Executive in Council against the refusal or the conditions (though this does not prevent the MA's decision from taking immediate effect). A similar right of appeal exists in respect of a number of other decisions made by the MA using his powers under the Ordinance.
107. The procedures for an appeal to the Chief Executive in Council are prescribed in the [Administrative Appeals Rules](#) of the Interpretation and General Clauses Ordinance (Cap. 1). Under the Rules, an appellant shall submit an appeal for the consideration of the Chief Executive in Council within thirty days after the notification to him of the MA's decision against which he wishes to appeal. The appellant will normally be notified of the decision of the Chief Executive in Council in writing within fourteen days after the determination of the appeal.

## **Appeals to the Banking Review Tribunal**

108. Appeals, in relation to certain decisions of the MA connected with the imposition of capital requirements or liquidity requirements on authorized institutions, may be made by aggrieved institutions to the Banking Review Tribunal (BRT) established under section 101A of the Ordinance. The decisions of the MA which may be subject to appeal to the BRT are specified in the Ordinance, the Banking (Capital) Rules and the Banking (Liquidity) Rules and include the variation by the MA of a capital requirement rule or liquidity requirement rule applicable to an institution; the imposition by the MA of remedial measures if an authorized institution contravenes a capital requirement rule or liquidity requirement rule; the refusal by the MA to grant approval for the use by the institution of a specific approach (e.g. the internal ratings-based approach to the calculation of credit risk) to calculate its capital requirements or the attachment of any condition to such approval (including a decision to amend or cancel conditions already attached to such an approval); and the designation or revocation by the MA of the institution as a category 1 institution or category 2A institution.

## **Deposit Protection Scheme**

109. A Deposit Protection Scheme (DPS), which is administered by the Hong Kong Deposit Protection Board (the Board), is established according to the DPS Ordinance for protecting deposits placed in Hong Kong. Under the DPS Ordinance, every bank in Hong Kong is a member of the Scheme unless it is otherwise exempted by the Board. A Scheme member has to observe the requirements stipulated in the DPS Ordinance. These include payment of contributions, submission of statistical returns and compliance with the rules and guidelines issued by the Board under the DPS Ordinance.
110. The coverage of the DPS is up to HK\$500,000 per depositor per Scheme member.

The funding of the DPS comes from annual contributions collected from Scheme members. Details of the applicable levies can be found in [Schedule 4](#) to the DPS Ordinance and the minimum amount of annual contribution is set at HK\$50,000 (if a bank becomes a Scheme member other than at the beginning of a year, the amount payable will be calculated on a time pro rata basis).