

42. Contempt dealt with by Tribunal

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

(2) Without limiting the generality of the powers of the Tribunal under subsection (1), the Tribunal has the same powers as the Court of First Instance to punish for contempt, as if it were contempt of court, a person who, without reasonable excuse, commits any conduct falling within section 40(3).

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

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

- (a) no power may be exercised under or pursuant to this section to determine whether to punish any person for contempt in respect of any conduct if—
 - (i) criminal proceedings have previously been instituted against the person under section 40(3) in respect of the same conduct; and
 - (ii) (A) those criminal proceedings remain pending; or
(B) by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under that section in respect of the same conduct;
- (b) no criminal proceedings may be instituted against any person under section 40(3) in respect of any conduct if—
 - (i) any power has previously been exercised under or pursuant to this section to determine whether to punish the person for contempt in respect of the same conduct; and
 - (ii) (A) proceedings arising from the exercise of such power remain pending; or
(B) by reason of the previous exercise of such power, no power may again be lawfully exercised under or pursuant to this section to determine whether to punish the person for contempt in respect of the same conduct.

43. Appeal to Court of Appeal

(1) Where the Tribunal has delivered its determination under section 39(8)(a) or (b) on a review of—

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

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

(2) The Court of Appeal may affirm, reverse or vary the determination appealed against.

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

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

PART 7

MISCELLANEOUS

44. Confidentiality

(1) Except so far as it is necessary for the performance of any function under this Ordinance or for carrying into effect the provisions of this Ordinance, every person to whom this subsection applies—

- (a) shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any person that come to his knowledge in the performance of any function under this Ordinance;
- (b) shall not communicate any such matter to any person other than the person to whom such matter relates; and
- (c) shall not suffer or permit any person to have access to any records in his possession, custody or control.

(2) Subsection (1) applies to—

- (a) any person who—
 - (i) is or has been—
 - (A) a member of the Board;
 - (B) a related person of the Board; or
 - (C) a person employed by or assisting a related person of the Board; and
 - (ii) performs or has performed any function under this Ordinance; and
- (b) the Monetary Authority, or a person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66) to assist the Monetary Authority.

(3) Subsection (1) does not apply—

- (a) to the disclosure of information in summary form that is so framed as to prevent particulars relating to the business of any particular Scheme member being ascertained from it;
- (b) to the disclosure of information with a view to the institution of, or otherwise for the purpose of, any criminal proceedings, whether under this Ordinance or otherwise;
- (c) in connection with any other legal proceedings arising out of this Ordinance;
- (d) to the disclosure of information to the police or the Independent Commission Against Corruption, at the request of the Secretary for Justice, relevant to the proper investigation of any criminal complaint;
- (e) to the disclosure of information with a view to the institution of, or otherwise for the purpose of, any disciplinary proceedings relating to the discharge of his professional duties by an auditor, or a former auditor, of a Scheme member or former Scheme member, whether or not the auditor or former auditor, as the case may be, was appointed for the purposes of section 46(3) or (4);
- (f) to the disclosure of information to the Chief Executive, the Financial Secretary, the Monetary Authority, the Securities and Futures Commission, an investor compensation company recognized by the Commission under section 79 of the Securities and Futures Ordinance (Cap. 571) or any public officer authorized by the Financial Secretary for the purpose of enabling or assisting the Board to perform its functions under this Ordinance;
- (g) to the disclosure of information to an auditor, or a former auditor, of a Scheme member or former Scheme member for the purpose of enabling or assisting the Board to perform its functions under this Ordinance;
- (h) to the disclosure of information with the consent of—
 - (i) the person from whom the information was obtained or received; and
 - (ii) where the information does not relate to such person, the person to whom it relates;
- (i) to the disclosure of information which has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section; or
- (j) to the disclosure of information required by law.

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

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

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

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

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

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

45. Immunity

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

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

46. Power of Board to obtain information

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

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

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

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

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

- (a) a beneficiary for whom a deposit maintained with the Scheme member is held by a depositor as a trustee or bare trustee;
- (b) a principal for whom a deposit maintained with the Scheme member is held by a depositor as an agent; or
- (c) a client for whom a deposit maintained with the Scheme member is held by a depositor in a client account.

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

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

(7) If a Scheme member fails to submit an auditor's report as required under subsection (3) or (4), every director and every chief executive of the Scheme member commits an offence and is liable on conviction to a fine at level 6 and to a further fine of \$10,000 for each day on which the failure continues.

(8) Any person who signs any document to which subsection (1), (2), (3) or (4) relates and which he knows or reasonably ought to know to be false in a material particular commits an offence and is liable—

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(9) In this section—

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

47. False statements regarding Scheme membership and protected deposits

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

- (a) a person is a Scheme member; or
- (b) a deposit, or any other financial product, is a protected deposit.

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

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

48. Defences

In any proceedings for an offence under section 12(11), 14(6), 44(6) or 46(6) or (7), it is a defence for the person charged to prove that he took reasonable precautions and exercised due diligence to avoid the commission of the offence by himself or any person under his control.

49. Power of Board to make rules

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

- (a) specifying the requirements of the information systems to be maintained by Scheme members so as to facilitate payment of compensation to depositors in accordance with this Ordinance;
- (b) specifying the manner in which compensation is to be paid to depositors from the Fund;
- (c) specifying the manner in which contributions and late payment fees are to be paid by Scheme members;
- (d) specifying the information and documents that the Board may require for the purpose of deciding the entitlement of a depositor or any other person to compensation under Division 2 of Part 5;

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

50. Power of Chief Justice to make rules

The Chief Justice may make rules—

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

51. Power of Monetary Authority to make rules

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

(2) Rules made under this section may—

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

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

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

52. Amendment of Schedules

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

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

53. Consequential and other amendments

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

SCHEDULE 1

[ss. 2 & 52 & Sch. 4]

DEFINITION OF “PROTECTED DEPOSIT”

1. In this Ordinance, unless the context otherwise requires, “protected deposit” (受保障存款) means a deposit denominated in any currency and maintained with a Scheme member but—

- (a) does not include—
 - (i) a term deposit where the current term agreed to by the depositor at the most recent time it was negotiated exceeds 5 years;
 - (ii) a deposit the repayment of which is secured either in whole or in part on the assets of the Scheme member;
 - (iii) a bearer instrument;
 - (iv) a deposit taken by the Scheme member at any of its offices outside Hong Kong; or
 - (v) a deposit held for the account of the Exchange Fund;
- (b) does not—
 - (i) except in relation to Part 5 of this Ordinance, include a deposit held by an excluded person in his own right, or, in the case of a deposit held by an excluded person and a non-excluded person in their own right (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person’s share in the deposit;

- (ii) except in relation to section 14 and Part 5 of this Ordinance and Schedule 4, include—
 - (A) a deposit held by a depositor as a bare trustee or agent, or in a client account, for an excluded person, or, in the case of a deposit so held for an excluded person and a non-excluded person (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person's share in the deposit; or
 - (B) a deposit held by a depositor as a trustee for an excluded person only; and
- (c) does not, in relation to Part 5 of this Ordinance, include—
 - (i) a deposit held by an excluded person in his own right, or, in the case of a deposit held by an excluded person and a non-excluded person in their own right (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person's share in the deposit;
 - (ii) a deposit held by a depositor as a bare trustee or agent, or in a client account, for an excluded person, or, in the case of a deposit so held for an excluded person and a non-excluded person (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person's share in the deposit; or
 - (iii) a deposit held by a depositor as a trustee for an excluded person only.

2. In this Schedule—

“authorized institution” (認可機構) has the meaning assigned to it by section 2(1) of the Banking Ordinance (Cap. 155);

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

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

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

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

“holding company” (控股公司) means a holding company within the meaning of section 2 of the Companies Ordinance (Cap. 32);

“non-excluded person” (非豁除人士) means—

- (a) in relation to paragraph (b) of section 1, a person who is not an excluded person within the meaning of that paragraph;
- (b) in relation to paragraph (c) of section 1, a person who is not an excluded person within the meaning of that paragraph;

“officer” (人員)—

- (a) in relation to a Scheme member or its related company that is an authorized institution, means—
 - (i) a director of the Scheme member or the company;
 - (ii) a chief executive of the Scheme member or the company;

(iii) a controller, within the meaning of section 2(1) of the Banking Ordinance (Cap. 155), of the Scheme member or the company; or

(iv) a manager, within the meaning of that section, of the Scheme member or the company;

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

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

(a) a holding company of the Scheme member;

(b) a subsidiary of the holding company; or

(c) a subsidiary of the Scheme member;

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

3. For the purposes of section 1(b)(i) and (ii)(A) and (c)(i) and (ii), if a deposit is held by more than one person in their own right or held for more than one person, each of those persons is deemed to have an equal share in the deposit unless the contrary is proved to the satisfaction of the Board.

SCHEDULE 2

[ss. 4 & 52]

PROVISIONS RELATING TO BOARD

1. Seal

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

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

2. Tenure of non-executive members

(1) A non-executive member of the Board shall be appointed for a term not exceeding 3 years.

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

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

(4) If any non-executive member of the Board, including the Chairman, is absent from Hong Kong or is for any other reason unable to exercise the powers or discharge the duties of his office as member or Chairman, as the case may be, the Chief Executive may appoint another person to be a temporary member or Chairman, as the case may be, in his place during his absence or incapacity.

3. Terms and conditions of appointment of members

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

4. Removal of appointed members

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

- (a) has become bankrupt, is incapacitated by physical or mental illness, or is otherwise unable or unfit to perform the functions of a member of the Board; or
- (b) in the case where the member is a non-executive member, has become a public officer,

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

5. Meetings and proceedings of Board

(1) Meetings of the Board are to be held at such times and places as the Chairman of the Board, or the person acting as the Chairman, may decide.

(2) The quorum for meetings of the Board is 5.

(3) Subject to the provisions of this Schedule, the Board may determine its own procedures.

(4) At any meeting of the Board, the Chairman of the Board, or the person acting as the Chairman, has a vote on all matters coming before the Board; and in the case of an equality of votes, he also has a casting vote.

6. Transaction of business by circulation of papers

The Board may transact any of its business by circulation of papers, and a resolution in writing which is approved by a majority of the members of the Board is as valid and effectual as if it had been duly passed at a meeting of the Board by the votes of the members of the Board so approving the resolution.

7. Committees

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

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

8. Conflict of interests

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

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

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

SCHEDULE 3

[ss. 38, 49, 50 & 52]

PROVISIONS RELATING TO TRIBUNAL

1. Interpretation

In this Schedule—

“panel member” (小組成員) means a member of the panel referred to in section 38(4) of this Ordinance;

“parties” (各方)—

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

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

“Tribunal member” (審裁處成員) means a member of the Tribunal appointed under section 38(2)(b) of this Ordinance.

2. Tenure of Chairman

(1) The Chairman of the Tribunal shall be appointed for a term not exceeding 3 years.

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

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

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

(a) has become bankrupt;

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

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

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

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

3. Tenure of panel members

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

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

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

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

(a) has become bankrupt;

(b) is incapacitated by physical or mental illness;

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

(d) has become a public officer,

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

4. Tenure of Tribunal members

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

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

5. Sittings

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

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

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

(3) At a sitting of the Tribunal—

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

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

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

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

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

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

6. Miscellaneous

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

SCHEDULE 4

[ss. 2, 14 & 52 & Sch. 1]

CONTRIBUTIONS TO FUND

1. Interpretation

(1) In this Schedule, unless the context otherwise requires—
“balance of protected deposits” (受保障存款結餘), in relation to a Scheme member, means, subject to subsection (2), the amount of the protected deposits maintained with the Scheme member in respect of which compensation would, if a specified event has, for the purposes of Part 5 of this Ordinance, occurred in relation to the Scheme member, be payable in accordance with this Ordinance;

“build-up levy” (建立期徵費) means the build-up levy payable by a Scheme member under section 3(4);

“expected loss levy” (預期損失徵費) means the expected loss levy payable by a Scheme member under section 4(2);

“surcharge” (附加費) means the surcharge payable by a Scheme member under section 5(2);

“target fund size” (基金目標金額), in relation to a year, means the size of the Fund that the Board seeks to achieve and maintain for that year.

(2) In calculating, for the purposes of the definition of “balance of protected deposits” in subsection (1), the amount of the protected deposits maintained with a Scheme member in respect of which compensation would be payable in accordance with this Ordinance—

(a) any amount of liabilities of any depositor to the Scheme member shall be disregarded;

(b) interest accrued on protected deposits shall not be included;

(c) a depositor of a protected deposit, or portion thereof, with the Scheme member who holds the deposit or that portion as a bare trustee or agent, or in a client account, is taken as being entitled, in respect of the deposit or that portion, to compensation under Division 2 of Part 5 of this Ordinance as if he held the deposit as a trustee;

(d) a deposit held by a depositor as a bare trustee or agent, or in a client account, for—
(i) an excluded person within the meaning of paragraph (a), (b), (c), (d) or (e)(i) of the definition of “excluded person” in section 2 of Schedule 1; or

(ii) such an excluded person and a person who is not such an excluded person, is taken as a deposit so held for a person who is not such an excluded person;

(e) a deposit held by a depositor as a trustee for such an excluded person only is taken as a deposit so held for a person who is not such an excluded person.

(3) For the purposes of this Schedule, the target fund size is reached in a particular year if the sum of—

(a) the aggregate amount of contributions payable by all Scheme members for that particular year; and

(b) the balance of the Fund as at 20 October of the immediately preceding year, is equal to or greater than the target fund size for that particular year.

2. Calculation of target fund size and balance of Fund

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

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

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

3. Build-up levy

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

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

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

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

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

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

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

TABLE

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

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

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

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

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

4. Expected loss levy

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

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

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

TABLE

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

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

5. Surcharge

- (1) This section applies to any year—
 - (a) to which section 4 applies; and
 - (b) 70% of the target fund size for which is greater than the balance of the Fund as at 20 October of the immediately preceding year.
- (2) A surcharge is payable by a Scheme member for any year to which this section applies.
- (3) Subject to section 6, the amount of surcharge payable by a Scheme member for any year is the amount of build-up levy that would have been payable by the Scheme member for that year in accordance with section 3(5) as if section 3 applied to that year, adjusted proportionately in the ratio of—
 - (a) the aggregate amount of surcharges payable by all Scheme members for that year, calculated in accordance with subsection (4); to
 - (b) the aggregate amount of build-up levies that would have been payable by all Scheme members for that year, calculated in accordance with subsection (4)(a)(i).
- (4) The aggregate amount of surcharges payable by all Scheme members for any year is—
 - (a) the difference between—
 - (i) the aggregate amount of build-up levies that would have been payable by all Scheme members for that year in accordance with section 3(5) as if section 3 applied to that year; and
 - (ii) the aggregate amount of expected loss levies payable by all Scheme members for that year in accordance with section 4(3); or
 - (b) 30% of the amount by which the target fund size for that year exceeds the balance of the Fund as at 20 October of the immediately preceding year,
 whichever is the lower.

6. Calculation of contribution for new Scheme members

- (1) The amount of contribution payable by a Scheme member for the year in which it becomes a member of the Scheme by virtue of section 11(3) of this Ordinance—
 - (a) shall be calculated on the basis of the balance of protected deposits maintained with the Scheme member as at the date it becomes a member of the Scheme but not 20 October of the immediately preceding year; and
 - (b) is that proportion of the amount of projected full-year contribution for that year that the number of days during which the Scheme member is a member of the Scheme in that year bears to 365.

(2) If a Scheme member becomes a member of the Scheme by virtue of section 11(3) of this Ordinance after 20 October in any particular year, the amount of contribution payable for the subsequent year shall be calculated on the basis of the balance of protected deposits maintained with the Scheme member as at the date it becomes a member of the Scheme but not 20 October of that particular year.

(3) In this section, “projected full-year contribution” (預計全年供款), in relation to a year in which a Scheme member becomes a member of the Scheme by virtue of section 11(3) of this Ordinance, means the amount of contribution that would have been payable by the Scheme member if that Scheme member had been a member of the Scheme during the whole of that year.

7. Minimum amount of contribution

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

8. Rebate

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

(2) For any year in which a rebate is required to be made by the Board, the amount of rebate payable to a Scheme member is the aggregate amount of rebates payable to all Scheme members in that year, calculated in accordance with subsection (3), adjusted proportionately in the ratio of—

- (a) the amount of net contribution by the Scheme member during the immediately preceding 10 years or the period since the commencement of this Schedule, whichever is the shorter; to
- (b) the aggregate of the amount of net contribution by each of the Scheme members during the same period.

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

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

9. Refund of contribution

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

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

SCHEDULE 5

[s. 53]

CONSEQUENTIAL AND OTHER AMENDMENTS

Companies Ordinance**1. Preferential payments**

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

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

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

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

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

“(5E) If—

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

that the arrangement was entered into or carried out for the sole or dominant purpose of enabling the person, either alone or in conjunction with other persons, to become entitled to priority under subsection (1)(db), to which the person would otherwise not be entitled,

the priority given under subsection (1)(db) shall apply as if the arrangement or any part thereof had not been entered into or carried out.

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

- (a) a deposit held for the account of the Exchange Fund established by the Exchange Fund Ordinance (Cap. 66);
- (b) a deposit held by an excluded person in his own right, or, in the case of a deposit held by an excluded person and a non-excluded person in their own right (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person's share in the deposit;
- (c) a deposit held by a depositor as a bare trustee or agent, or in a client account, for an excluded person, or, in the case of a deposit so held for an excluded person and a non-excluded person (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person's share in the deposit; and
- (d) a deposit held by a depositor as a trustee (but not a bare trustee) for an excluded person only.

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

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

- (a) if the depositor referred to in subparagraph (i) of that paragraph consists of 2 or more persons—
 - (i) in the case where the persons carry on business in partnership, those persons are, for the purpose of priority given under that paragraph, a single and continuing body of persons as distinct from the persons who may from time to time be the members of the partnership;
 - (ii) in any other case, each of those persons is deemed to have an equal share in the deposit, or the relevant portion thereof, unless the contrary is proved to the satisfaction of the liquidator or provisional liquidator;
 - (b) if the beneficiary, principal or client referred to in subparagraph (ii), (iii) or (iv) of that paragraph consists of 2 or more persons—
 - (i) in the case where the persons carry on business in partnership, those persons are, for the purpose of priority given under that paragraph, a single and continuing body of persons as distinct from the persons who may from time to time be the members of the partnership;
 - (ii) in any other case, each of those persons is deemed to have an equal share in the deposit, or the relevant portion thereof, unless the contrary is proved to the satisfaction of the liquidator or provisional liquidator; and
 - (c) if the depositor referred to in subparagraph (v) of that paragraph consists of 2 or more persons, those persons are, for the purpose of priority given under that paragraph, a single and continuing body of persons as distinct from the persons who may from time to time be the trustees.
- (5I) If—
- (a) a person has more than one of the following capacities—
 - (i) a depositor holding one or more deposits, or portion thereof, in his own right;
 - (ii) a beneficiary for whom one or more deposits, or portion thereof, is or are held by a depositor as a bare trustee;
 - (iii) a principal for whom one or more deposits, or portion thereof, is or are held by a depositor as an agent;
 - (iv) a client for whom one or more deposits, or portion thereof, is or are held by a depositor in a client account; and

- (b) the aggregate of the amount that shall be paid in priority under subsection (1)(db)(i), (ii), (iii) or (iv) in respect of the relevant deposits or portions would, but for this subsection, have exceeded \$100,000,
the amount that shall be paid in priority under subsection (1)(db)(ii), (iii) or (iv) shall abate in equal proportions among themselves so that the aggregate referred to in paragraph (b) shall be \$100,000.”;
- (d) in subsection (6)—
- (i) in the definition of “controller”—
 - (A) by repealing “總監” and substituting “控權人”;
 - (B) in the Chinese text, by repealing the full stop at the end and substituting a semicolon;
 - (ii) in the definition of “deposit” and “depositor”, by repealing “戶” and substituting “款人”;
 - (iii) by adding—
 - ““arrangement” (安排) includes an arrangement, transaction, operation or scheme whether or not such arrangement, transaction, operation or scheme is enforceable, or intended to be enforceable, by legal proceedings;
 - “bare trustee” (被動受託人) has the same meaning as in the Deposit Protection Scheme Ordinance (of 2003);
 - “chief executive” (行政總裁) has the same meaning as in the Banking Ordinance (Cap. 155);
 - “excluded person” (豁除人士), in relation to a deposit maintained with the company being wound up, means—
 - (a) a related company of the company;
 - (b) an officer of the company or its related company on—
 - (i) the date immediately preceding the date on which a Manager within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) has been appointed in respect of the company being wound up under section 52 of that Ordinance; or
 - (ii) the date on which a petition for the winding up of the company being wound up has been presented,
 whichever is the earlier;
 - (c) a multilateral development bank as defined in paragraph 1 of the Third Schedule to the Banking Ordinance (Cap. 155);
 - (d) an authorized financial institution; or
 - (e) a foreign bank;
 - “foreign bank” (外地銀行) means a company that—
 - (a) is incorporated outside Hong Kong;
 - (b) is not an authorized financial institution; and
 - (c) may, in or outside the place where it is incorporated, lawfully take deposits from the general public (whether or not on current account), or is authorized or recognized as a bank in that place;
 - “non-excluded person” (非豁除人士) means a person who is not an excluded person;
 - “officer” (人員), in relation to a company that is an authorized financial institution, means—
 - (a) a director of the company;
 - (b) a chief executive of the company;
 - (c) a controller of the company; or
 - (d) a manager of the company;
 - “related company” (關連公司), in relation to a company, means—
 - (a) a subsidiary of the company;
 - (b) a holding company of the company; or
 - (c) a subsidiary of the holding company;
 - “specified date” (指明日期), in relation to a company, means—

- (a) the date on which a Manager within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) has been appointed in respect of the company under section 52 of that Ordinance; or
 - (b) the date on which a petition for the winding up of the company has been presented,
- whichever is the earlier;”.

Banking Ordinance

2. Official secrecy

- Section 120(5) of the Banking Ordinance (Cap. 155) is amended by adding after paragraph (g)—
- “(gaa) to the disclosure of information by the Monetary Authority to the Hong Kong Deposit Protection Board established by section 3 of the Deposit Protection Scheme Ordinance (of 2003) for the purpose of enabling or assisting the Board to exercise its functions under that Ordinance;”.

3. Grounds for revocation of authorization

- The Eighth Schedule is amended by adding—
- “21. The authorized institution has failed to comply with any requirement under the Deposit Protection Scheme Ordinance (of 2003) applicable to the institution.”.

Securities and Futures Ordinance

4. Subrogation of recognized investor compensation company to rights, etc. of claimant on payment from compensation fund

- Section 87 of the Securities and Futures Ordinance (Cap. 571) is amended—
- (a) in subsection (1)(a), by adding “subject to subsection (1A),” before “the company”;
 - (b) by adding—
 - “(1A) The company is not subrogated to any rights and remedies of the claimant in respect of compensation from the Deposit Protection Scheme Fund established by section 13 of the Deposit Protection Scheme Ordinance (of 2003).”.

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

- Section 243 is amended—
- (a) in subsection (1)(a), by adding “subject to subsection (1A),” before “the Commission”;
 - (b) by adding—
 - “(1A) The Commission is not subrogated to any rights and remedies of the claimant in respect of compensation from the Deposit Protection Scheme Fund established by section 13 of the Deposit Protection Scheme Ordinance (of 2003).”.

6. Preservation of secrecy, etc.

- Section 378(2) is amended by adding—

“(ea) the disclosure of information to the Hong Kong Deposit Protection Board established by section 3 of the Deposit Protection Scheme Ordinance (of 2003) for the purpose of enabling or assisting the Board to perform its functions under that Ordinance;”.

Securities and Futures (Investor Compensation—Claims) Rules

7. Making a claim for compensation

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

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

(b) by adding—

“(1A) A qualifying client of a specified person shall not claim compensation from the compensation fund in respect of any loss in respect of which he has received payment that is made out of the Deposit Protection Scheme Fund established by section 13 of the Deposit Protection Scheme Ordinance (of 2003).”.

Explanatory Memorandum

The principal object of this Bill is to provide for—

- (a) the establishment of a Hong Kong Deposit Protection Board;
- (b) the establishment by the Board of a Deposit Protection Scheme for the purpose of providing compensation to depositors under certain circumstances in respect of deposits maintained with banks that are members of the Scheme;
- (c) the establishment of a Deposit Protection Scheme Fund from which such compensation is to be paid; and
- (d) contributions to the Fund, and the entitlement to, and payment of, compensation from the Fund.

2. Part 1 contains preliminary provisions. Clause 2 defines the terms used in the Bill. In particular, the term “protected deposit” is defined by reference to Schedule 1.

3. Part 2 deals with the establishment of the Hong Kong Deposit Protection Board (the “Board”). In particular—

- (a) clause 3 establishes the Board;
- (b) clause 4 sets out the composition and membership of the Board;
- (c) clause 5 sets out the functions of the Board;
- (d) clause 6 requires the Board to perform its functions through the Monetary Authority;
- (e) clause 7 sets out the powers of the Board; and
- (f) clause 8 empowers the Chief Executive in Council to give the Board written directions with respect to the performance of the Board’s functions.

4. Part 3 deals with the establishment of the Deposit Protection Scheme (the “Scheme”). In particular—
- (a) clause 10 requires the Board to establish and maintain the Scheme;
 - (b) clause 11 provides that every bank is a member of the Scheme; and
 - (c) clause 12 empowers the Board to exempt a bank from being a member of the Scheme under certain circumstances.
5. Part 4 deals with the establishment of the Deposit Protection Scheme Fund (the “Fund”). In particular—
- (a) clause 13 establishes the Fund and sets out what constitutes the Fund;
 - (b) clause 14 provides for the contributions to the Fund;
 - (c) clause 15 sets out what may be paid from the Fund;
 - (d) clauses 16 to 19 deal with the financial provisions in relation to the Fund; and
 - (e) clause 20 empowers the Board to place or invest money of the Fund in certain investments.
6. Part 5 deals with compensation from the Fund. Division 1 (clauses 21 to 24) contains preliminary provisions, which include definitions of the terms used in that Part. Division 2 (clauses 25 to 29) deals with the entitlement to such compensation. Division 3 (clauses 30 to 37) deals with the payment of such compensation. In particular—
- (a) clause 21 sets out when a specified event has occurred in relation to a bank that is a member of the Scheme;
 - (b) clause 25 sets out the compensation to which a person is entitled under clauses 26, 27 and 28 when a specified event has occurred;
 - (c) clause 26 deals with the entitlement to compensation of a depositor of a protected deposit who holds the deposit in his own right;
 - (d) clause 27 deals with the entitlement to compensation of a person who is a beneficiary, principal or client for whom a protected deposit is held by a depositor as bare trustee or agent, or in a client account, respectively;
 - (e) clause 28 deals with the entitlement to compensation of a depositor of a protected deposit who holds the deposit as a trustee;
 - (f) clause 30 sets out the Board’s duties and powers in relation to payment of compensation when a specified event has occurred;
 - (g) clause 33 limits the amount of compensation payable to a depositor;

- (h) clause 34 empowers the Board to make interim payment of compensation under certain circumstances; and
- (i) clause 36 provides for the subrogation of the Board to the rights and remedies of the depositor to whom the Board has made a payment of compensation, in relation to his deposits maintained with the bank.

7. Part 6 deals with review of certain decisions or assessments of the Board or Monetary Authority by the Deposit Protection Appeals Tribunal (the “Tribunal”). In particular—

- (a) clause 38 establishes the Tribunal and sets out its composition and membership;
- (b) clause 39 provides for the review of—
 - (i) certain decisions of the Board or Monetary Authority; and
 - (ii) assessments of the Board of the amount of contribution to the Fund,and for procedural and other matters relating to the review;
- (c) clause 40 sets out the powers of the Tribunal;
- (d) clauses 41 and 42 provide for other matters relating to the Tribunal; and
- (e) clause 43 provides for appeals to the Court of Appeal against determinations of the Tribunal on a point of law.

8. Part 7 deals with miscellaneous matters. In particular—

- (a) clauses 44 and 45 contain confidentiality and immunity provisions;
- (b) clause 46 empowers the Board to require a bank that is a member of the Scheme to submit certain information and report;
- (c) clause 48 provides for a defence for certain offences under the Bill;
- (d) clause 49 empowers the Board to make rules after consultation with the Financial Secretary and The Hong Kong Association of Banks;
- (e) clause 50 empowers the Chief Justice to make rules for the purpose of requests for review, or reviews, under Part 6;
- (f) clause 51 empowers the Monetary Authority to make rules, after consultation with The Hong Kong Association of Banks, for the purpose of enabling a bank that is a member of the Scheme to be required to maintain, in respect of the protected deposits maintained with the bank, assets in Hong Kong; and
- (g) clause 52 empowers the Chief Executive in Council to amend Schedule 1, 2, 3 or 4.

9. Schedule 2 contains the provisions relating to the Board. Those provisions deal with the tenure of certain members, procedures of proceedings and other related matters.
10. Schedule 3 contains the provisions relating to the Tribunal. Those provisions deal with the tenure of the Chairman and members, procedures of sittings and other related matters.
11. Schedule 4 contains the provisions on the contributions to the Fund payable by a bank that is a member of the Scheme and on the rebate and refund of such contributions.
12. Schedule 5 contains consequential and other amendments to several Ordinances.