The Banking Regulation Review

Eighth Edition

Editor
Jan Putnis

The Law Reviews

THE BANKING REGULATION REVIEW

The Banking Regulation Review
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This article was first published in The Banking Regulation Review, - Edition 8
(published in May 2017 – editor Jan Putnis)

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Editor
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Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK

www.TheLawReviews.co.uk

ISBN 978-1-910813-58-4

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

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ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ADNAN SUNDRA & LOW

ADVOKATFIRMAET BA-HR DA

AFRIDI & ANGELL

ALI BUDIARDJO, NUGROHO, REKSODIPUTRO

ALLEN & GLEDHILL LLP

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HENGELER MUELLER PARTNERSCHAFT VON RECHTSANWÄLTEN MBB

HOGAN LOVELLS BSTL, SC

LAKATOS, KÖVES AND PARTNERS

LENZ & STAEHELIN

MORALES JUSTINIANO PEÑA & LUMAGUI

NAUTADUTILH

PINHEIRO NETO ADVOGADOS

ROJS, PELJHAN, PRELESNIK & PARTNERS O.P., D.O.O.

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PREFACE

You might expect the writer of a preface to this book to remark on how the world of banking regulation has been turned upside down in the past year following the result of the UK referendum on European Union membership and Donald Trump's election as President of the United States. Revolutionary changes may happen, but at the time of writing they have not happened yet. It seems premature to predict major changes in the outlook for banking regulation over the next year when policymakers themselves have not yet decided what the past year's events will mean in this area.

Dealing with such certainty as we currently have, it does seem clear that the past year's political events will bring forward an era in which banking regulation will be more varied, and potentially much less well coordinated, between major economies than the principal authors of the major post-crisis reforms in the United States and Europe had hoped. This presents a complex scenario for banks. For some banks it seems that just as the great structural reform agenda that emerged from the financial crisis has reached a conclusion, a new set of challenges has emerged that might in some ways be almost as profound as what went before. Brexit is, at the time of writing, the best example of this, but who would now dismiss the prospect of another round of bank structural reform, or at least a new way of looking at the 'too big to fail' challenge, emerging from the United States?

The choices that the boards of international banks now have to make on business models are as difficult as they have ever been. They face the combined threat of encroachment by FinTech business models, increasing compliance risk and complexity across the countries in which they operate, and the menace of cybercrime. Threats that begin locally may become international as regulators probe systems and controls, and inadequate anti-money laundering controls allow criminals into a bank's systems at the weakest points.

In the next 12 months it will be essential for banks that are affected by these challenges to think creatively and flexibly about how best to deal with them, particularly as the nature of the challenges will, in many cases, continue to evolve for years to come. The relationship between the UK as a financial centre and the rest of Europe is a case in point: the Brexit negotiations that take place in the coming 18 months will just be the start of a period of history in which that relationship will evolve, and this evolution is unlikely to follow a predictable path. Banks will not be able to evaluate the threats, and perhaps the opportunities, that may transpire unless they have a thorough end-to-end understanding of their business origination methods, booking models and risk management techniques. It is the banks that can adapt these aspects of their business models to changing circumstances most quickly, and maintain a transparent and positive dialogue with their clients about impending change, that will suffer least when events take an unexpected turn.

Attention must also turn to how regulators in the major banking centres respond to renewed uncertainty and the risk of fragmentation in the post-crisis consensus on banking regulatory reform. While that programme of reform solidified new ways for regulators to work together, there is a very strong case for regulators to redouble their efforts to secure meaningful regulatory cooperation given current uncertainties. This may now seem counter-intuitive to some of their less perceptive political masters, but it has never been more important for regulators to increase their cooperation so as to maximise the options for early intervention and avert threats to financial stability. There is a real need to renew and re-emphasise the lines of communication and understanding that are essential to ensure that there will remain a good chance of managing a major cross-border bank resolution effectively.

This eighth edition of *The Banking Regulation Review* contains chapters provided by authors in 35 countries and territories in April and May 2017, as well as the usual chapters on International Initiatives and the European Union. Thank you again to all of the authors, for many of whom this has now become an annual event, albeit one that never seems to require less effort than before given all that is happening in this interesting area of regulation.

The team at Law Business Research have succeeded admirably in finding the deep reserves of patience that they needed this year to cope with a group of authors experiencing a very busy start to 2017. I would like to thank them all again for their understanding.

Finally, thank you to the partners and staff at Slaughter and May in London and Hong Kong, firstly for encouraging projects such as this and then for putting up with them when they take longer than expected to complete. Particular thanks are due this year to Nick Bonsall, Emily Bradley, Tim Fosh, Ben Kingsley, Peter Lake, Tolek Petch, Jocelyn Poon and David Shone.

Jan Putnis
Slaughter and May
London
May 2017

Chapter 13

HONG KONG

Peter Lake[1]

I INTRODUCTION

Hong Kong has a three-tier system of banking institutions covering licensed banks, restricted licence banks and deposit-taking companies. There are separate licensing regimes, laws and regulations governing money lenders and money brokers. As of 30 April 2017 there were 156 licensed banks, 21 restricted licence banks, 17 deposit-taking companies and 53 local representative offices of overseas banks in Hong Kong. The five largest licensed banks in Hong Kong measured by total assets are HSBC, Bank of China (Hong Kong), Hang Seng Bank, Standard Chartered Bank (Hong Kong) and Bank of East Asia. The Hong Kong Monetary Authority (HKMA) is the government authority responsible for maintaining monetary and banking stability in Hong Kong.

II THE REGULATORY REGIME APPLICABLE TO BANKS

Companies wishing to carry on banking business or the business of taking deposits in Hong Kong are required under the Banking Ordinance (Chapter 155 of the Laws of Hong Kong) to be authorised by the HKMA. These institutions are referred to in the Banking Ordinance as 'authorized institutions' (AIs).

i The HKMA

The HKMA's functions and policy objectives are:

a maintaining currency stability;
b promoting the stability and integrity of the financial system;
c helping to maintain Hong Kong's status as an international financial centre; and
d managing the Exchange Fund (Hong Kong's official reserves).

The HKMA fulfils some of the functions of a central bank, such as formulating and implementing monetary policy, supervising banks and managing the Exchange Fund. Other functions, notably the issuance of bank notes, are carried out by three banks within Hong Kong's commercial banking sector: Bank of China, HSBC and Standard Chartered.

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1 Peter Lake is a partner at Slaughter and May. The author would like to thank his colleague Jocelyn Poon for her assistance in preparing this chapter.

ii Banking regulation

The Banking Ordinance provides the legal framework for banking regulation, which is supplemented by two publications by the HKMA: the Supervisory Policy Manual and the Guide to Authorization. The Supervisory Policy Manual contains the HKMA's latest supervisory policies and practices. The Guide to Authorization sets out the HKMA's interpretation of the authorisation criteria, the procedures for processing applications for authorisation and the grounds for revocation of licences.

iii Local representative offices

Instead of seeking authorisation to be AIs, overseas banks may, with the approval of the HKMA, establish local representative offices in Hong Kong. Local representative offices are not allowed to engage in any banking or deposit-taking business in Hong Kong. Their role is therefore largely confined to liaison work between the overseas bank and its customers in Hong Kong.

iv AI eligibility criteria

Certain basic criteria must be satisfied to be eligible to become an AI and obtain a banking licence. The HKMA has general discretion to grant or refuse an application for authorisation and, if one or more of the criteria is not fulfilled, the HKMA must refuse the relevant application for authorisation. An AI must be a body corporate. Where the applicant for AI branch authorisation is a bank incorporated outside Hong Kong, the HKMA will confirm with the relevant overseas banking supervisory authority that it has given consent for the applicant to establish a branch in Hong Kong. The authorisation criteria for AIs, which are set out in the Seventh Schedule to the Banking Ordinance, ensure that only fit-and-proper institutions are entrusted with public deposits.

v Securities activities

The banking industry is regulated jointly by the HKMA and the Securities and Futures Commission of Hong Kong (SFC) to the extent that AIs carry on business in one or more 'regulated activities' as defined in the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) (SFO). Regulated activities include dealing in securities, advising on securities, advising on corporate finance and asset management.

The foundation of the regulatory framework for the securities and futures industry is that carrying on a business in a regulated activity without a licence, and without reasonable excuse, is a criminal offence. AIs that carry on business in one or more regulated activities are defined as 'registered institutions' in the SFO. To become a registered institution, the institution in question must satisfy the SFC that it is a 'fit-and-proper' person.

The SFO sets out a limited number of regulated activities (such as leveraged foreign exchange trading and certain types of securities margin financing) that AIs may carry out without a licence. The SFO includes provisions that have not yet commenced whose effect is to extend 'regulated activities' to advising or dealing in derivatives (or other structured products). AIs will largely be exempted from the derivatives regulated activities but are required under other provisions – and in line with international standards – to comply with mandatory reporting, clearing and margining rules in respect of their derivatives activities.

vi Cross-border marketing

The Banking Ordinance prohibits marketing that invites members of Hong Kong's public to make deposits. The prohibition catches persons outside Hong Kong who market to persons in Hong Kong. The prohibition is subject to a number of exceptions, including invitations to make deposits with AIs and invitations to make deposits outside Hong Kong, which contain prescribed disclosures.

Hong Kong's securities legislation, under the SFO, similarly prohibits the active marketing of regulated activities to Hong Kong's public if the relevant service provider of the regulated activities has not been granted a licence by the SFC.

vii HKMA's approach to banks regulated by overseas regulators

The HKMA recognises that the primary authority for supervising overseas banks lies with the supervisory authority of the jurisdiction where the relevant bank is incorporated. Accordingly, not all of the provisions in the Banking Ordinance and the Supervisory Policy Manual are applicable to AIs incorporated outside Hong Kong. Corporate governance and capital adequacy are two areas where the Banking Ordinance and the Supervisory Policy Manual are not applicable to banks incorporated outside Hong Kong, although the Banking Ordinance does set out certain capital thresholds to be met by an institution to become and remain authorised.

However, the HKMA does retain supervising power over most matters of day-to-day conduct of banking affairs for overseas banks authorised in Hong Kong. Rules and guidelines under the Banking Ordinance covering areas such as the appointment of directors responsible for the Hong Kong operations of the overseas bank, the code of conduct of the Hong Kong operation, internal risk controls and risk management, liquidity management, trading activities and money laundering are applicable to overseas banks authorised in Hong Kong.

III PRUDENTIAL REGULATION

i Relationship with the prudential regulator

The primary responsibility for the prudent management of an AI rests with the board of directors and management itself. The HKMA issues guidance to AIs through its Supervisory Policy Manual. While the Supervisory Policy Manual does not itself have the force of law, any failure to adhere to any of the guidelines set out in it may call into question whether an AI continues to satisfy the minimum criteria for authorisation under the Banking Ordinance.

Continuous supervision

The HKMA adopts a 'continuous supervision' policy so as to detect and address problems at an early stage. Various techniques are used by the HKMA to gather information and to monitor the business of each AI, including:

a on-site and off-site examinations;
b prudential meetings with the senior management;
c meetings with the board of directors;
d cooperation with external auditors; and
e sharing information with other supervisors.

Furthermore, regular statutory returns are required to be submitted to the HKMA.

Risk-based approach

The HKMA adopts a risk-based approach to evaluate the safety and soundness of an AI, its risk-management systems and its internal controls. This enables the HKMA to pre-empt any serious threat to the stability of the banking system.

The major types of inherent risks identified by the HKMA are credit, interest rate, market liquidity, operational, legal, reputation and strategic risks. A risk-management rating is assigned and factored into the 'management' component and other relevant components of the CAMEL rating system, which is an internationally recognised framework for assessing capital adequacy, asset quality, management, earnings and liquidity. The output of the CAMEL system is a supervisory rating to reflect the HKMA's view of the overall safety and soundness of the relevant AI.

For a Hong Kong-incorporated AI, the HKMA normally conducts a regular supervisory review once a year. The supervisory review process is a comprehensive assessment of the level of capital that a Hong Kong-incorporated AI should set aside for the eight major types of inherent risks identified for the purpose of risk-based supervision.

The HKMA has issued rules under the Banking (Capital) Rules (Chapter 155L of the Laws of Hong Kong) that prescribe in detail how the capital adequacy of locally incorporated AIs should be calculated. These rules incorporate Basel III technical guidance. In addition, the HKMA's revised Supervisory Policy Manual module CA-G-5 (supervisory review process) sets out details of the changes to the supervisory review process that were necessitated by the implementation of the Basel III capital standards. On 1 January 2015, the Banking (Capital) (Amendment) Rules 2014 came into operation, which introduced several capital buffers that were used to implement the second phase of the Basel III capital standards, including the capital conservation buffer, the countercyclical capital buffer and the higher loss absorbency (HLA) requirement. The capital conservation buffer is an additional layer of common equity Tier 1 (CET1) capital above the 'hard' minimum capital requirements that will be phased in in equal annual increments to 2.5 per cent of banks' total risk-weighted assets by January 2019. The countercyclical capital buffer is a further requirement for CET1 capital ranging from zero to 2.5 per cent of risk-weighted assets for banks' private sector credit exposures in Hong Kong when the HKMA determines there is excess aggregate credit growth associated with a build-up of system-wide risk in Hong Kong. The HLA ratio will apply to domestic banks considered by the HKMA to be systemically important (there are currently no global systemically important banks (G-SIBs) headquartered and incorporated in Hong Kong). They will be obliged to comply with this requirement by maintaining an additional layer of CET1 capital increasing to a range (as from 2019) from 1 to 3.5 per cent of their total risk-weighted assets. The Banking (Capital) (Amendment) Rules 2015 subsequently came into effect on 1 January 2016, which aligned the rules to conform with the relevant standards issued by the Basel Committee on Banking Supervision.

While there are separate regulators for the prudential supervision of securities, insurance, Mandatory Provident Fund schemes and money lending businesses in Hong Kong, the HKMA supervisory review process assesses all the major risks of a banking group, whether arising from banking or non-banking activities.

Consolidated supervision

The capital adequacy, concentration of exposures and liquidity of a Hong Kong-incorporated AI are supervised on a consolidated basis to enable the HKMA to assess any weaknesses within a banking or financial group that may have an impact on the AI itself, and to take any necessary defensive or remedial actions. When supervising banking groups, the HKMA takes a flexible approach to determining the scope of consolidated supervision. As a general rule, the banking group's local and overseas offices and financial subsidiaries are covered. Non-bank companies are included in the consolidation if they undertake 'financial' business such as hire purchase, credit cards or leasing. Where non-bank companies (e.g., securities firms or insurance companies) are adequately supervised by other supervisors, the HKMA will rely heavily on their cooperation to ensure effective overall supervision of the banking group. The HKMA will also consider contagion risk in relation to an AI's holding and sister companies.

ii Management of banks

One of the authorisation criteria under the Banking Ordinance is that the HKMA must be satisfied that the chief executive and directors of the applicant company are fit-and-proper persons to hold their respective positions. The HKMA will have regard to the person's experience, knowledge and skills, as well as his or her reputation and character, competence, soundness of judgement and diligence, whether he or she has a record of non-compliance with non-statutory codes or disciplinary records, his or her involvement as a director in any companies wound up by the court, and his or her business record and financial soundness and strength.

The legal and regulatory duties of the management of AIs are detailed in the HKMA's Supervisory Policy Manual modules on Corporate Governance (CG-1 to CG-7). In particular, the revised Supervisory Policy Manual module CG-1 (Corporate Governance of Locally Incorporated Authorized Institutions) sets out principles adopted by the HKMA in line with the Basel Committee on Banking Supervision's Principles for Enhancing Corporate Governance.

The board is ultimately responsible for the conduct of an AI's affairs, but the HKMA recognises that it may be beneficial for supervision of major functional areas to be delegated to certain specialised committees such as an executive committee, credit committee, asset and liability committee, remuneration committee and audit committee. It is also recognised that key functions and policies of an AI that is a subsidiary of another banking institution may be determined and centralised at the holding company level.

Outsourcing

The Supervisory Policy Manual module SA-2 (Outsourcing) sets out the HKMA's supervisory approach to outsourcing and the major points that the HKMA recommends AIs to address when outsourcing their activities. The HKMA's main concerns are with accountability, risk assessment, the ability of service providers, confidentiality of customer data, the degree of control the AI maintains over outsourced activities, contingency planning, and access to outsourced data by the HKMA's examiners and the AI's internal and external auditors.

iii Regulatory capital and liquidity

Capital adequacy ratio

The HKMA must be satisfied that an AI has financial resources that are adequate for the inherent risks in its business to reduce the risk of insolvency. All AIs are required under the Banking Ordinance to maintain minimum levels of share capital. As regards Hong Kong-incorporated AIs, the HKMA's framework for capital adequacy is based on Basel III (which was implemented in Hong Kong on 1 January 2013).

A Hong Kong-incorporated AI is required under the Banking (Capital) Rules to maintain a CET1 capital ratio of at least 4.5 per cent, a Tier 1 capital ratio of at least 6 per cent and a total capital ratio of 8 per cent. Branches of foreign banks are not subject to this requirement but, based on the HKMA's past practice of generally requiring any foreign bank that wishes to establish a branch in Hong Kong to maintain a capital adequacy ratio of at least 8 per cent, it is likely that the HKMA will continue to require foreign banks to meet the three minimum risk-weighted capital ratios.

Under the supervisory review process discussed above, the HKMA may require an AI to have a capital buffer to cater for risks and uncertainties that are not already captured by the three minimum risk-weighted capital ratios. The HKMA has the power under the Banking Ordinance to vary any capital requirement rule applicable to an AI.

Capital buffers

As mentioned above, the HKMA has implemented the following capital buffers: the capital conservation buffer, the countercyclical capital buffer and (for domestic systematically important banks (D-SIBs)) the higher loss absorbency requirement.

The capital conservation buffer is being phased in equal annual increments. The capital conservation buffer is an additional band of CET1 capital equal to 1.25 per cent in 2017, and will increase to 1.875 per cent in 2018 and then to its upper level, 2.5 per cent, in 2019.

The level of the countercyclical capital buffer is an additional band of capital base determined by the HKMA's analysis on whether there is excess aggregate credit growth associated with a build-up of system-wide risk in Hong Kong. On 27 January 2017, the HKMA announced that the countercyclical capital buffer will increase from the current 1.25 per cent to 1.875 per cent with effect from 1 January 2018. This is in accordance with the maximum countercyclical counter buffer permitted for 2018 under the Basel III phase-in arrangement. The HKMA regards a continued build-up of the buffer as appropriate given the risks associated with recent credit and property market conditions and external political uncertainties. The HLA requirement applies only to D-SIBs. It is an extension of the capital conservation buffer. On 30 December 2016, the HKMA announced that Hong Kong's list of D-SIBs remains unchanged from December 2015. The five D-SIBs are The Hongkong and Shanghai Banking Corporation Limited, Bank of China (Hong Kong) Limited, Hang Seng Bank Limited, Standard Chartered Bank (Hong Kong) Limited and The Bank of East Asia, Limited. Each D-SIB will, in accordance with the Basel Committee arrangements, include a higher loss absorbency (HLA) requirement into the calculation of its regulatory capital buffers. Of the five banks, the HKMA has designated to The Hongkong and Shanghai Banking Corporation Limited the highest HLA (1.25 per cent for 2017, 1.875 per cent for 2018) and to The Bank of East Asia, Limited the lowest HLA (0.5 per cent for 2017, 0.75 per cent for 2018).

If a Hong Kong-incorporated AI's capital level erodes to a level falling within the capital conservation buffer zone, the countercyclical capital buffer zone, or for a D-SIB, the HLA buffer zone, restraints will be imposed on that AI's distributions. A Hong Kong-incorporated AI is expected to discuss with the HKMA if it anticipates that any of its capital levels will fall close to the buffer zones.

A further standard, on banks' holdings of total loss-absorbing capacity (TLAC) instruments issued by G-SIBs, is expected to take effect on 1 January 2019. Although there are no Hong Kong-incorporated G-SIBs, we expect that AIs that comprise part of a G-SIB group may be required to hold 'internal TLAC' to ensure that TLAC support is located at the right levels of the G-SIB group. The TLAC standard will, however, affect AIs more generally due to the requirement to deduct – subject to exemption thresholds – the amount of TLAC instruments, to the extent not already treated as constituting regulatory capital of the TLAC instrument issuer, held by Hong Kong-incorporated AIs from their Tier 2 capital. This acts as a capital disincentive on a Hong Kong-incorporated AI holding TLAC instruments issued by other financial institutions.

Solo and consolidated capital adequacy ratio

In broad terms, the Banking (Capital) Rules impose capital requirements on Hong Kong-incorporated AIs at two levels: on a solo basis and a consolidated basis.

All Hong Kong-incorporated AIs are required to maintain a capital adequacy ratio on a solo basis, which provides a measure of each institution's (including its local and overseas branches) capital strength. A Hong Kong-incorporated AI may apply to the HKMA to include in its capital base, for the purposes of calculation of its solo capital adequacy requirement, the capital invested in any subsidiary that meets the criteria set out in the Banking (Capital) Rules such that the capital adequacy ratio of that institution will be calculated on a 'solo-consolidated basis'.

Where a Hong Kong-incorporated AI undertakes other banking and financial business through subsidiary companies, the HKMA normally also requires the AI to maintain its capital adequacy ratio on a consolidated basis. This is to ensure that the Hong Kong institution's capital position is maintained at an adequate level taking into account its exposures to risks stemming from such subsidiaries. It is usually the practice of the HKMA to set the same minimum capital adequacy ratio requirement at both the solo and consolidated levels, unless the results of the supervisory review process justify otherwise.

Composition of capital base

Under the Banking Ordinance, the capital base of an AI is the sum of its Tier 1 capital and Tier 2 capital. Tier 1 capital is the sum of an AI's CET1 capital and its additional Tier 1 capital. The key elements of the CET1 capital of an AI are the AI's CET1 capital instruments; the AI's retained earnings and other disclosed reserves; and the amount of minority interests arising from the CET1 capital instruments issued by the consolidated bank subsidiaries of the AI and held by third parties. The Banking (Capital) Rules also set out in detail how an AI's additional Tier 1 capital and Tier 2 capital are to be calculated. In respect of each category of capital, the Banking (Capital) Rules also specify which items are to be excluded from the calculation, as well as which deductions are to be made.

Risk-weighted amount

The Banking (Capital) Rules set out various alternative approaches that a Hong Kong-incorporated AI can use to calculate its risk-weighted amounts for credit risk, market risk and operational risk. Each Hong Kong-incorporated AI is expected to choose options based on the results of its own detailed feasibility study. However, there is a default approach for each relevant risk that every Hong Kong AI must adopt unless the prior approval of the HKMA has been obtained for using another approach.

Most banks in Hong Kong use the standardised approach for both credit risk and market risk. For operating risk, the banks are approximately split between the standardised approach and the basic indicator approach.

Banks in Hong Kong generally have strong capital bases. The consolidated capital adequacy ratio of Hong Kong-incorporated AIs was well above the 8 per cent requirement under the Banking (Capital) Rules (19.6 per cent in September 2016).

Liquidity risk

The risk-based supervisory approach includes the continuous supervision of each AI's liquidity risk. Central to this is an assessment of the AI's ability to maintain adequate liquidity in the event of a liquidity crisis. The HKMA considers the amount of high-quality liquid assets that the AI can readily dispose of or pledge for funding; the results of stress tests on its cash-flow and liquidity positions; and the stability of the AI's funding sources and its contingency measures for dealing with crisis situations.

Amendments to the Banking Ordinance have been enacted to remove the liquidity ratio from the main body of the legislation and to allow the HKMA to make subsidiary legislation prescribing liquidity requirements to implement Basel III reforms. On 1 January 2015, the Banking (Liquidity) Rules (Chapter 155Q of the Laws of Hong Kong) implementing the Basel III liquidity coverage ratio (LCR) came into operation, which sought to promote banks' resilience to short-term liquidity risks by ensuring they have sufficient high-quality liquid assets to meet their obligations for at least 30 days under an acute stress scenario. This is in accordance with the timetable of the Basel Committee on Banking Supervision. In addition, the HKMA will introduce a new 'net stable funding ratio' (NSFR) by 1 January 2018. The purpose of the NSFR is to reduce the funding risk of banks over a longer time by requiring them to fund their activities with sufficiently stable sources of funding.

The LCR applies only to AIs designated by the HKMA as 'category 1 institutions' under the liquidity rules. Category 1 institutions are those internationally active AIs or larger or more sophisticated AIs that are significant to the general stability of the local Hong Kong banking system. All category 1 institutions must maintain an LCR of at least 80 per cent for 2017 (90 per cent for 2018). Other AIs not designated as category 1 institutions ('category 2 institutions') will be subject to the liquidity maintenance ratio (LMR), which is a modified version of the pre-existing liquidity ratio. All category 2 institutions must maintain an LMR of at least 25 per cent.

Whether incorporated in or outside Hong Kong, the LCR or LMR (as applicable) will apply only to an AI's business in Hong Kong and its local branches (i.e., excluding any subsidiaries or overseas branches of the AI). For a Hong Kong-incorporated AI, the HKMA may require the LCR or LMR (as applicable) to be calculated on a consolidated basis instead of an unconsolidated basis, or on both a consolidated and an unconsolidated basis.

Liquidity of Hong Kong banks

Hong Kong banks' balance sheets have remained liquid in the aftermath of the global financial crisis and, moreover, have improved over the past 12 months. The consolidated quarterly average LCR of category 1 institutions in Hong Kong stood at 136.4 per cent (September 2015), 158.0 per cent (June 2016) and 159.9 per cent (September 2016). The consolidated quarterly average LMR of category 2 institutions in Hong Kong stood at 53.8 per cent (September 2015), 53.8 per cent (June 2016) and 53.2 per cent (September 2016).

iv Recovery and resolution

The HKMA is a member of the Financial Stability Board (FSB) and has committed in principle to improving the effectiveness of its own resolution regime in light of the FSB policy paper, Key Attributes of Effective Resolution Regimes, published in October 2011. The Financial Institutions (Resolution) Ordinance (Chapter 628 of the Laws of Hong Kong), which is the primary legislation setting out Hong Kong's resolution regime, was brought onto the statute book in June 2016 although it has not yet commenced operation. The Ordinance establishes a cross-sector resolution regime for relevant financial institutions (including all AIs) with a view to avoid or mitigate the risks otherwise posed by their non-viability to the stability of Hong Kong's financial system.

The HKMA is contributing to the process of drawing up international resolution and recovery plans as a member of the crisis management groups of several G-SIBs.

Although the resolution planning legislation has not yet commenced operation, the HKMA today may still exercise a number of powers under the Banking Ordinance if, *inter alia*, an AI informs the HKMA that it is likely to become unable to meet its obligations, or that it is insolvent or about to suspend payment. The HKMA may also take such action unilaterally. In these circumstances, the HKMA, after consultation with the Financial Secretary of Hong Kong, may give directions to the AI in relation to its affairs, business and property.

A new guideline on recovery planning, RE-1, has been added to the Supervisory Policy Manual, which aims to inform AIs of the key elements of effective recovery planning, and to set out the HKMA's approach and expectations in respect of its review of recovery plans.

A draft consultation guideline on resolution planning, RE-2, has been published.

IV CONDUCT OF BUSINESS

i Conduct of business rules

The HKMA requires AIs to establish a Code of Conduct setting out the standards of behaviour expected of their management and employees. The Code of Conduct should discourage conflicts of interest, the granting and receiving of credit by members of staff to themselves or their relatives, bribery, personal investments when in possession of price-sensitive information and outside employment. It should also encourage staff to handle personal data carefully and contribute to the good reputation of the AI by reporting any illegal activities. The HKMA requires the effectiveness of the Code of Conduct and related systems to be audited regularly.

ii The Code of Banking Practice

A revised Code of Banking Practice (Code), issued jointly by the Hong Kong Association of Banks and the Deposit-taking Companies Association and endorsed by the HKMA, was launched on 6 February 2015. The revised Code gives wider protection to customers and promotes good banking practices by aligning with international standards on financial consumer protection. Some amendments include extending the scope of the Code to subordinated and affiliated companies controlled by AIs, and integrating the G20 High-level Principles on Financial Consumer Protection as general principles for AIs to follow when providing services and products to their customers. The Code is issued on a voluntary basis, although the HKMA expects all AIs to comply with it and the HKMA monitors compliance. It covers areas such as terms and conditions, fees and charges, use of customer information, residential mortgage financing, card services and electronic banking services.

iii Banking confidentiality

Under common law, a term imposing a duty of confidentiality may be implied in contracts between a bank and its customer. The duty of confidentiality applies to information arising directly from the customer's account, other information obtained through the relationship between the bank and the customer, or in coming to decisions about the bank's treatment of its customers. For the purpose of this duty, where a banking group is structured through subsidiary companies, each subsidiary is considered as a separate entity. Therefore, restrictions on disclosure apply equally to transfers of information within a banking group as to transfers to a third party. In contrast, branches of a single corporate entity are considered to form part of the same entity. Therefore, information may be transferred freely between them subject to any applicable data protection laws.

There are four heads of acceptable disclosure of a customer's confidential information by a bank:

a compulsion of law;
b duty to the public;
c interests of the bank; and
d express or implied consent of the customer.

Head (c) is only applicable where disclosure is needed to protect the bank and not simply where it would be commercially advantageous.

Personal data are regulated in Hong Kong by the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong) (PDPO). The purpose of the PDPO is to protect the privacy interests of living individuals in relation to personal data. It applies to any person (a data user) who controls the collection, holding, processing or use of personal data in Hong Kong. A 'person' for the purposes of identifying a data user includes 'any public body, any body of persons, corporate or unincorporated'. Branches as well as subsidiary companies may constitute separate data users, and transfers between them should be in accordance with the PDPO. A third party to whom data are outsourced (e.g., for the completion of IT tasks) will not be a data user for the purposes of the PDPO in relation to data it 'holds, processes or uses solely on behalf of another person' if it does not hold, process or use that data for any of its own purposes. This exemption is not available where the third party is involved in the collection of data.

According to the Code, AIs should treat their customers' (and former customers') banking affairs as private and confidential, and should at all times comply with the PDPO and any relevant codes of practice issued or approved by the Privacy Commissioner in the collection, use and holding of customer information.

In October 2014, the Office of the Privacy Commissioner for Personal Data, Hong Kong (PCPD), published a Guidance Note on the Proper Handling on Customers' Personal data for the Banking Industry, which explains for the benefit of banks the PDPO requirements in relation to the collection, holding, processing and use of customer data. The Guidance Note contains a number of useful case studies that are based on matters that have been considered by the Privacy Commissioner. In October 2015, the PCPD published a revised edition of its frequently asked questions on Understanding the Code of Practice on Consumer Credit Data in relation to the Sharing of Mortgage Data for Credit Assessment Purpose. The publication addresses common questions regarding the regulations on the sharing of mortgage data by credit providers through a credit reference agency under the Code of Practice on Consumer Credit Data.

iv Potential sources of liability

The Supervisory Policy Manual reminds directors of AIs to be aware of their legal obligations under all applicable laws and regulations, including but not limited to the Banking Ordinance, the Companies Ordinance (Chapter 622 of the Laws of Hong Kong), the SFO, the PDPO, the Drug Trafficking (Recovery or Proceeds) Ordinance (Chapter 405 of the Laws of Hong Kong), the Organised and Serious Crimes Ordinance (Chapter 455 of the Laws of Hong Kong), the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Chapter 615 of the Laws of Hong Kong) and the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong).

The SFO contains provisions on market misconduct (insider dealing, market manipulation, disclosure of false or misleading information, etc.). The SFO also contains several key provisions applicable to AIs that are registered with the SFC to carry on a business in one or more regulated activities. In general, AIs are subject to the provisions of the SFO in the same way as licensed corporations (i.e., institutions that are licensed by the SFC) in respect of their regulated activities. The major areas of difference, arising from the need to avoid regulatory overlap with the Banking Ordinance, are capital requirements and the handling of client money.

Directors may be held personally liable for non-compliance with many of the requirements under the Banking Ordinance and the SFO. In certain circumstances, such as under some offences in the Theft Ordinance (Chapter 210 of the Laws of Hong Kong), directors may be held criminally liable for offences committed by companies of which they are a director.

V FUNDING

Customer deposits are the most important source of funding for retail banks in Hong Kong. They have recently accounted for over 70 per cent of total liabilities. The high level of customer deposits has kept customer deposit rates at a low level: the monthly average savings deposit rates per annum of less than HK$100,000 quoted by leading licensed banks has remained at 0.01 per cent since November 2008. The high level of customer deposits also contributes to the low rate of interest offered on Hong Kong dollar loans by licensed banks in the Hong Kong interbank market (HIBOR): the quarterly average of one-month HIBOR stood at 0.25 per cent (September 2016).

i Stable funding requirement (SFR)

The HKMA introduced an SFR in October 2013, which required AIs with significant loan growth to ensure they had adequate stable funding to support their lending business. The HKMA conducted a review of the SFR in 2014 and introduced several refinements that took effect from January 2015. These refinements were primarily aimed at streamlining the SFR and reducing AIs' reporting burden. It is intended that the SFR will continue in place until the international standard NSFR is introduced under Basel III in 2018.

ii Provision of liquidity assistance by the HKMA

Intraday liquidity

The HKMA provides liquidity assistance to licensed banks on their request, if necessary, through conducting foreign exchange swaps between the US dollar and the Hong Kong dollar, and lending money against collateral of a credit quality acceptable to the HKMA. Intraday repos that fail to be reversed before the close of the business day will be carried into overnight borrowing through the discount window arrangement described below. These two arrangements were introduced in 2008 as part of five precautionary and temporary measures to enhance the framework of liquidity provision to the banking system in Hong Kong in light of the global financial conditions at that time. The other three measures were withdrawn in March 2009, but these two arrangements remain in place.

Overnight liquidity

Although not used actively in 2015, temporary overnight funding is available to licensed banks in Hong Kong through the discount window. The discount window facility was introduced in September 1998 as a mechanism through which licensed banks can borrow Hong Kong dollar funds from the HKMA through repurchase agreements using eligible securities as collateral. The HKMA also operates a Hong Kong dollar discount facility for Hong Kong Government Bonds to all licensed banks in Hong Kong, which can provide up to HK$10 billion overnight liquidity against a sale and repurchase of Hong Kong Government Bonds.

Renminbi Liquidity Facility

The Renminbi Liquidity Facility was introduced by the HKMA to address potential short-term liquidity demands in the offshore renminbi market, which may be due to seasonal factors or capital market activities. The facility was first launched in June 2012. In the light of experience in operating the facility and developments in the offshore renminbi market, the HKMA has made numerous enhancements to the facility in the past four years. Under the Renminbi Liquidity Facility, banks can obtain renminbi from the HKMA on an overnight, one-day, one-week or intraday basis.

Lender of last resort (LOLR)

The HKMA has the ability to provide liquidity to AIs as the LOLR using the resources provided by the Exchange Fund, which the HKMA uses to regulate the exchange value of the Hong Kong dollar. It is believed that the HKMA has never had to exercise its function as LOLR.

The HKMA issued a policy statement in March 2009 explaining its role as the LOLR. The guiding principle governing the provision of LOLR support to an AI is whether the failure of that institution, either by itself or through spreading contagion to other entities, would damage the stability of the exchange rate, or the monetary or financial systems. Given LOLR support will only be provided when failure of the AI might have systemic implications, LOLR support will not normally be given to branches of foreign banks operating in Hong Kong. The HKMA expects the head office of such a branch to be its source of LOLR support and, in the absence of such support, such a branch may have to close its operations in Hong Kong.

Deposit protection scheme (DPS)

The LOLR arrangement is complemented by the DPS, which was launched in 2006 under the Deposit Protection Scheme Ordinance (Chapter 581 of the Laws of Hong Kong) (DPSO) under which eligible deposits are protected. Eligible deposits exclude:

a structured deposits;

b bearer instruments;

c term deposits with a maturity exceeding five years;
d deposits where the repayments are secured on the assets of the member of the DPS;
e offshore deposits;
f deposits held for the account of the Exchange Fund; and
g deposits held by an excluded person under the DPSO.

The HKMA acts as an executive arm of the Hong Kong Deposit Protection Board in administering the DPS.

Only licensed banks are required and eligible to participate in the DPS. This is consistent with the aim of the DPS, which is to protect small depositors. A small number of licensed banks, which are branches of overseas-incorporated banks that are already covered by appropriate overseas deposit protection schemes, are exempted from the DPS.

The DPS is pre-funded by contributions from each member of the scheme. Further, the Deposit Protection Board has secured a credit facility from the Exchange Fund. The size of the credit facility is sufficient to cope with the simultaneous failures of two medium-sized banks.

Compensation will be paid to depositors when the court issues a winding-up order; or the HKMA, after consultation with the Financial Secretary, instructs the Deposit Protection Board to pay compensation. Under the DPS, each depositor (whether an individual or a corporate) who is not an excluded person under the DPSO is entitled to a maximum of HK$500,000 of compensation for each failed scheme member with which it places deposits. The amount of compensation entitlement will be calculated net of any liabilities owed by that depositor to the scheme member.

VI CONTROL OF BANKS AND TRANSFERS OF BANKING BUSINESS

i Control regime

Control of Hong Kong-incorporated AIs

The Banking Ordinance provides that no person shall become a controller of a Hong Kong-incorporated AI without the prior approval of the HKMA. A controller includes the following:

a an indirect controller: a person in accordance with whose directions or instructions the directors of the institution are accustomed to act;
b a majority shareholder controller: a person who controls over 50 per cent of the voting rights of the institution; and
c a minority shareholder controller: a person who controls between 10 and 50 per cent of the voting rights of the institution.

Note-issuing banks

Pursuant to Section 3(5) of the Legal Tender Notes Issue Ordinance (Chapter 65 of the Laws of Hong Kong), the Financial Secretary may amend any terms and conditions to which the authorisation to issue bank notes was granted. Shortly after Temasek Holdings, a Singapore state investment company, acquired a stake in Standard Chartered in 2006, the Financial Secretary of Hong Kong approved an additional policy requirement relating to the continuing authorisation of banks to be note-issuing banks. This provided that a note-issuing bank shall not have any close association with any foreign government or foreign government-controlled entity, which either alone or with associates is entitled to control

20 per cent or more of the voting power of the note-issuing bank or its holding company. In effect, the policy requirement is a barrier to controlling 20 per cent or more of the voting power of any of the three note-issuing banks in Hong Kong (although a determined bidder may not view the note-issuing status as a fundamental issue).

Overseas-incorporated AIs

While the acquisition of shareholdings and control in AIs incorporated outside Hong Kong do not need to be approved by the HKMA, the HKMA still needs to be satisfied that a person who is to be a controller of the AI is a fit and proper person to hold such a position. In doing so, the HKMA will rely heavily on the views of the home supervisor of the overseas-incorporated AI.

ii Approval process for controllers of Hong Kong-incorporated AIs

Application

A person seeking to become a controller of a Hong Kong-incorporated AI must first serve on the HKMA a written notice of intention. The written notice must be submitted together with any supporting documents requested by the HKMA.

It is generally the policy of the HKMA that a person who intends to hold 50 per cent or more of the share capital of a Hong Kong-incorporated AI should be a well-established bank or other supervised financial institution in good standing in the financial community and have appropriate experience. It is, however, possible for non-financial institutions and other entities – such as PRC state-owned enterprises – to become controllers of Hong Kong-incorporated AIs.

Timing

The Banking Ordinance does not specify when the written notice needs to be submitted to the HKMA. However, the HKMA's preference is to be approached at the earliest appropriate opportunity, and recent experience has indicated that the HKMA expects to be approached for an approval in principle before the formal application process begins. This includes an expectation to pre-vet any proposed announcement of the sale of an AI (regardless of whether they are incorporated in Hong Kong or not).

The HKMA then has up to three months from the date of service of the notice to serve a notice of consent, and recent cases show that the HKMA may need the full three months, particularly if the proposed controller is not an established bank or financial institution. In other, more straightforward cases, this period is normally six weeks to two months. The HKMA will be taken to have consented to a person becoming a controller of the Hong Kong-incorporated AI if it does not serve on him or her a notice of objection within the three-month period.

Considerations

In granting the notice of consent, the HKMA:

a must be satisfied that the person is a fit and proper person to become a controller of the Hong Kong-incorporated AI;

b must be satisfied that the interests of depositors and potential depositors of that Hong Kong-incorporated AI would not be threatened by that person becoming a controller;

c takes into account the person's likely influence on that Hong Kong-incorporated AI if he or she were to become a controller; and

d will take into account the financial position, reputation or conduct of the applicant to determine whether the controller could potentially damage the Hong Kong-incorporated AI through contagion.

In granting the notice of consent, the HKMA may specify such conditions as it thinks proper to safeguard the interests of depositors and potential depositors.

Although not explicitly set out in the legislation, the HKMA will take similar considerations into account when considering controllers of non-Hong Kong incorporated AIs, which it will review in the context of whether the AI remains fit and proper.

Approval

If the HKMA has served a notice of consent to the applicant, that person must become a controller before the expiration of 12 months from the date on which he or she was served such a notice of consent.

Controller financial support

Where a minority or majority shareholding in a Hong Kong-incorporated AI is to be acquired, the HKMA will generally require the acquiring shareholder controller to provide a letter of comfort committing to provide capital support, liquidity support or both to the AI, if necessary. The form of the letter of comfort is set out in the HKMA's Guide to Authorization.

Transfers of banking business

While other common law jurisdictions have a court-sanctioned scheme process to effect the transfer of banking business without the consent of the depositors or other counterparties, Hong Kong does not have an equivalent process.

Notification to the HKMA

A Hong Kong-incorporated AI cannot make any arrangement, or enter into any agreement for the sale or disposal of all or any part of its banking business or its business of taking deposits, without the prior written approval of the HKMA.

Private member's bill

In a business or asset transfer in Hong Kong, private legislation is the only alternative to obtaining individual customer consent. A private member's bill is a special kind of legislation intended to affect or benefit some particular person, association or corporate body. It may be used to transfer all or part of a company's business to another company or to extinguish the rights of any creditor of the company, or both. The private member's bill procedure has been used for a number of bank mergers with a Hong Kong element (e.g., Citibank, Dao Heng Bank and Standard Chartered), although this procedure is rare and is not currently favoured by the HKMA. The private member's bill procedure is, however, used in respect of the Hong Kong domestication of the businesses of Bank of Communications Co, Ltd, Hong Kong Branch by transferring that business to a Hong Kong company, Bank of Communications (Hong Kong) Limited. The customer consent route was used, among others, in the Standard

Chartered–American Express Bank integration in 2008, the Australia and New Zealand Bank–Royal Bank of Scotland integration in 2009 and the Union Bancaire Privée, UBP SA–Coutts integration in 2016.

VII THE YEAR IN REVIEW

A number of significant regulatory developments occurred in 2016 and early 2017.

i FinTech

Hong Kong regulators have focused on ways for Hong Kong to support FinTech schemes and businesses. In December 2016, the HKMA and others launched a scheme providing 70 openings in 11 participating banks, whereby candidates will be exposed to banking FinTech projects and will receive regulatory briefings from the HKMA and technical training from the Applied Science and Technology Research Institute. Separately, a FinTech cooperation agreement was entered into in December 2016 between the HKMA and the UK Financial Conduct Authority.

On 6 September 2016, the HKMA launched a 'FinTech supervisory sandbox' to facilitate pilot trials of FinTech initiatives of AIs before they are launched on a fuller scale.

ii Shenzhen-Hong Kong Stock Connect

The Shenzhen-Hong Kong Stock Connect launched on 5 December 2016, creating a second channel (in addition to the Shanghai-Hong Kong Stock Connect) for mutual access to stock markets of Mainland China and Hong Kong. Further liquidity providers were appointed by the HKMA to increase renminbi market liquidity to strengthen Hong Kong's role as the global hub for offshore renminbi business.

iii Suitability of investment products

The implementation date for updating client agreements to include a suitability provision is 8 June 2017. From this date onwards, banks that are regulated by the SFC (i.e., registered institutions) that solicit the sale of or recommend a financial product to a client will be subject to the SFC's requirement (under a regulatory code provision) to include a contractual obligation to ensure the financial product is reasonably suitable for the client having regard to the client's financial situation, investment experience and investment objectives. This does not apply to certain clients who are either institutional professional investors or corporate professional investors. The provision catches (and thus enhances rights of) all natural person professional investors.

Previous regulatory changes on suitability assessments were implemented in March 2016 (the most significant change being the requirement to carry out suitability assessments for natural person professional investors).

iv Cybersecurity

On 19 December 2016, the HKMA launched the Enhanced Competency Framework on Cybersecurity to enable cybersecurity talent development and to facilitate the building of professional competencies and capabilities of staff engaged in cybersecurity duties. In this respect, the HKMA has issued a guide on the framework.

v Independent non-executive directors (INEDs)

On 14 December 2016, the HKMA issued a guidance note on the empowerment of INEDs in the banking industry, which is to be implemented by 14 December 2017. The guidance covers:

a the number of INEDs (at least two for licensed banks);
b the establishment of an audit committee and, for systemically important AIs, a risk committee, a nomination committee and a remuneration committee;
c qualities of INEDs;
d time commitment;
e independence;
f length of tenure;
g remuneration of INEDs;
h board practices in relation to INEDs; and
i training and development.

In September 2016, the HKMA launched a development programme to equip and empower INEDs, which included the hosting by the HKMA of a full-day annual conference for INEDs, other seminars from senior HKMA officials and market professionals and small group briefing sessions for newly appointed INEDs. On 16 March 2017, the HKMA hosted the inaugural conference for INEDs.

vi Automatic exchange of financial account information in tax matters

The Inland Revenue Ordinance (Chapter 112 of the Laws of Hong Kong) was amended with effect from 30 June 2016 to introduce the international standard on the automatic exchange of financial account information in tax matters. Hong Kong financial institutions (including banks) will identify and collect the relevant information in 2017 and furnish the information to the Hong Kong Inland Revenue Department by May 2018 for onward transmission to the relevant overseas jurisdictions.

vii Stored value facilities (SVFs) and retail payment systems

A regulatory regime for SVFs (such as Octopus cards) and retail payment systems commenced on 13 November 2015. The one-year transition period has now expired, and as of 4 November 2016 there were 13 SVF licensees. The HKMA implements, supervises and enforces the regime. Licensed banks are deemed licensed to issue and operate SVFs.

In addition, the HKMA may designate retail payment systems to ensure their safe and robust operation under prudential regulation. Only those retail payment systems that pose risk to the monetary or financial stability of Hong Kong (or where there are matters of significant public interest) will be so designated.

viii Resolution regime

The Financial Institutions (Resolution) Ordinance, which is the primary legislation setting out Hong Kong's resolution regime, was brought onto the statute book in June 2016, although it has not yet commenced operation.

ix Anti-money laundering and counter-terrorism competency framework

On 13 December 2016, the HKMA introduced the Enhanced Competency Framework on Anti-Money Laundering and Counter-Terrorist Financing (the measures of which are outlined in its Guide). The framework is a collaboration between the HKMA and the banking sector to establish a common set of competency standards to raise professional competence.

x OTC derivatives

In July 2016, the HKMA and the SFC issued consultation conclusions on OTC derivatives. The conclusions covered technical aspects on mandatory reporting and mandatory clearing.

Mandatory reporting of OTC derivatives came into effect on 10 July 2015 (although licensed banks were previously reporting OTC derivatives under simplified interim reporting requirements introduced in 2013). The scope of mandatory reporting currently covers certain interest rate swaps and non-deliverable forwards, and is intended to be expanded – subject to the passing of necessary legislation – with effect from 1 July 2017 to also include FX derivatives, equity derivatives, credit derivatives and commodity derivatives.

Mandatory clearing (and related recordkeeping requirements) of OTC derivatives commenced on 1 September 2016. This first phase of mandatory clearing focuses on certain standardised interest rate swaps denominated in US dollars, euros, sterling, Japanese yen or Hong Kong dollars and entered into between major dealers such as AIs, approved money brokers and licensed corporations (or entered into between a major dealer and a financial service provider specified on a list prepared by the SFC and approved by the HKMA). AIs that exceed the relevant average three-month clearing threshold (currently US$20 billion, which is determined in respect of all outstanding OTC derivatives (other than certain deliverable FX forwards and deliverable FX swaps)) may – depending upon the size of the counterparty's OTC derivatives business – be subject to mandatory clearing and recordkeeping obligations in respect of the relevant interest rate swaps.

On 27 January 2017, the HKMA issued a new Supervisory Policy Manual module on 'Margin and risk mitigation standards for non-centrally cleared OTC derivatives'. The phase-in of initial margin and variation margin for the relevant institutions (being those with substantial OTC business (generally, with notional amount exceeding HK$15 billion) started from 1 March 2017 and is subject to a six-month transitional period. Further phase-in after that date (with reducing thresholds) applies to variation margin and risk mitigation standards.

xi Bank culture reform

On 2 March 2017, the HKMA issued a circular seeking to promote sound corporate culture for banks. The circular concentrates on governance (emphasising the importance of senior management setting an appropriate 'tone from the top' and leading by example), incentive systems (to avoid incentivising short-term business performance at the expense of the interests of customers and the safety and soundness of the bank) and assessment and feedback mechanisms (to monitor adherence to the banks' cultures, and behavioural standards and to set out escalation steps, including whistle-blowing mechanics). Necessary enhancement measures are to be implemented by 2 March 2018.

VIII OUTLOOK AND CONCLUSIONS

We anticipate the following areas of focus or development for the next 12 months:

a further work from AIs to prepare themselves for the Hong Kong changes to implement recommendations from the Basel Committee;

b continuing pressure from regulators in respect of KYC systems; and

c AIs to take preparatory steps for the implementation of the resolution regime.

Appendix 1

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Peter Lake is a partner in Slaughter and May's Hong Kong office. He is involved in a wide range of corporate, banking and finance work, advising leading companies, financial institutions and fund management groups from Hong Kong, the United Kingdom and elsewhere. He has advised on acquisitions, investments and financings as well as providing regulatory advice to a number of funds and financial institutions. He is listed as a leading lawyer in *Who's Who Legal Banking 2017* for finance in Hong Kong, and ranked for banking and finance and financial services: non-contentious regulatory (Hong Kong-based international firms, China) in *Chambers Asia 2017* and *Chambers Global 2017*. He is also listed as a leading lawyer for banking and finance in *Asia Pacific IFLR 1000 2017* and for banking and finance (Hong Kong) and investment funds (Hong Kong) in *Asia Pacific Legal 500 2017*. He is a member of the APLMA Documentation Committee. Mr Lake read law at Emmanuel College, Cambridge, and is qualified in England and Wales and in Hong Kong.

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