

CONTENTS

<i>Introduction and Overview of the Law</i>	v
<i>The Financial Institutions (Resolution) Ordinance (Cap.628) - At a Glance</i>	xv
<i>Table of Cases</i>	xxix
<i>Table of Legislation</i>	xxxii

PART 1 PRELIMINARY

Section 1	Short title and commencement	3
Section 2	Interpretation	4
Section 3	Interpretation: client assets	24
Section 4	Objects of this Ordinance	26
Section 5	When within scope financial institution ceases to be viable	27
Section 6	Power of Financial Secretary to designate or specify certain matters	28
Section 7	Power of Financial Secretary to designate lead resolution authority	30

PART 2 RESOLUTION AUTHORITIES

Section 8	Resolution objectives	33
Section 9	Role of lead resolution authority	35
Section 10	Appointment of entities to assist resolution authority	37
Section 11	General power of resolution authority	37

PART 3 POWERS RELATED TO RESOLUTION

Division 1 – Preparing for Resolution

Subdivision 1 – Resolvability Assessment and Resolution Planning

Section 12	Resolvability assessment	41
Section 13	Resolution planning	42

Subdivision 2 – Removal of Impediments		
Section 14	Power to direct removal of impediments	44
Section 15	Safeguards for entity served with notice	45
Section 16	Offence not to comply with notice	46
Section 17	Review of decisions	48
Section 18	Determination of application	49
Subdivision 3 – Loss-absorbing Capacity Requirements		
Section 19	Loss-absorbing capacity requirements	50
Division 2 – Directions		
Section 20	Interpretation	54
Section 21	When powers are exercisable	55
Section 22	Power to give directions	55
Division 3 – Removal of Directors etc.		
Section 23	When powers are exercisable	58
Section 24	Power to remove directors etc.	58
PART 4 MOVING TO RESOLUTION		
Division 1 – Initiation of Resolution		
Section 25	Conditions for initiating resolution of financial institution	62
Section 26	Effect on group members and jurisdictions may be considered	63
Section 27	Requirements for consultation and for liaising with regulatory bodies	63
Section 28	Holding companies	64
Section 29	Affiliated operational entities	65
Section 30	Letters of mindedness	67
Division 2 – Mandatory Reduction of Capital Instruments		
Section 31	Mandatory write off or conversion of capital instruments	68
Section 32	Capital reduction instruments: supplementary matters	72

PART 5 RESOLUTION**Division 1 – Stabilization Options****Subdivision 1 – Overview**

Section 33	Stabilization options	76
Section 34	Application of stabilization options	78
Section 35	Valuation to be made	79
Section 36	Nature of valuation	81
Section 37	Section 10 entity may assist in making valuation	82

Subdivision 2 – Transfer to Purchaser

Section 38	Application of Subdivision	83
Section 39	Transfer instruments	83
Section 40	Report	84

Subdivision 3 – Transfer to Bridge Institution

Section 41	Application of Subdivision	85
Section 42	Transfer instruments	86
Section 43	Bridge institution	87
Section 44	Onward bridge institution	87
Section 45	Bridge institution – onward transfer	88
Section 46	Report	88
Section 47	Winding up of bridge institution	89
Section 48	Disposal of proceeds	90

Subdivision 4 – Transfer to Asset Management Vehicle

Section 49	Application of Subdivision	90
Section 50	Property transfer instruments	91
Section 51	Asset management vehicle	92
Section 52	Management of assets by asset management vehicle	92
Section 53	Asset management vehicle securities transfer	92
Section 54	Onward property transfer from asset management vehicle	93
Section 55	Report	94
Section 56	Disposal of proceeds	95

Subdivision 5 – Bail-in

Section 57	Application of Subdivision	95
Section 58	Bail-in instruments	96
Section 59	Power to exclude additional liabilities	99
Section 60	Rules relating to liabilities	99
Section 61	Provision of bail-in instrument in relation to securities	100
Section 62	Bail-in instrument may include directions	101
Section 63	Business reorganization plans	103
Section 64	Onward transfer of securities	104
Section 65	Report	105

Subdivision 6 – Transfer to TPO Company

Section 66	Application of Subdivision	106
Section 67	Transfer of securities to TPO company	107
Section 68	Special limitation on option	107
Section 69	TPO company	108
Section 70	TPO company – onward transfer	108
Section 71	Transfer instruments	109
Section 72	Report	109
Section 73	Disposal of proceeds	110

Subdivision 7 – Protected Arrangements

Section 74	Interpretation	110
Section 75	Regulations relating to protected arrangements	112

Subdivision 8 – Deferral of Requirements

Section 76	Deferral of requirements under Banking Ordinance	114
Section 77	Deferral of requirements under Securities and Futures Ordinance	115
Section 78	Deferral of requirements under section 8 of Insurance Companies Ordinance	118

Division 2 – Power to Direct Continued Performance of Essential Services

Section 79	Power to direct residual financial institution	119
Section 80	Effect of direction under section 79	121
Section 81	Power to direct affiliated operational entity	122
Section 82	Offences related to directions	124

Division 3 – Suspension of Obligations

Section 83	Suspension of obligations	125
Section 84	Excluded obligations	127
Section 85	When obligation falls due	128

Division 4 – Default Event Provisions

Section 86	Interpretation	128
Section 87	Application of Division	130
Section 88	Qualifying contracts	130
Section 89	Events to be disregarded	131
Section 90	Suspension of termination rights	131
Section 91	Limitations on suspension	133
Section 92	Rules relating to suspension of termination rights	135

Division 5 – General

Section 93	Functions of resolution authority	135
------------	-----------------------------------	-----

PART 6 COMPENSATION**Division 1 – Preliminary**

Section 94	Interpretation	138
------------	----------------	-----

Division 2 – Independent Valuer

Section 95	Appointment of appointing person	139
Section 96	Appointment of independent valuer	140
Section 97	Access to relevant information	141
Section 98	Revocation of appointment of independent valuer	142
Section 99	Appointment of new valuer	144
Section 100	Use of information	146

Division 3 – Valuation

Section 101	Role of independent valuer	147
Section 102	Eligibility for compensation	147
Section 103	What independent valuer must assess	148
Section 104	Decision of independent valuer	149
Section 105	Regulations	150
Section 106	Time when decision takes effect	151

Division 4 – Review of Compensation Decision

Section 107	Application to Resolution Compensation Tribunal	152
Section 108	Determination of application	153

PART 7 TRIBUNALS**Division 1 – Resolvability Review Tribunal**

Section 109	Interpretation	158
Section 110	Establishment of Resolvability Review Tribunal	159
Section 111	Establishment of additional tribunals	161
Section 112	Jurisdiction of Tribunal	161
Section 113	Powers of Tribunal	162
Section 114	Sittings of Tribunal to be held in private	166
Section 115	Use of incriminating evidence required by Tribunal	167
Section 116	Contempt dealt with by Tribunal	168
Section 117	Costs	170
Section 118	Notification of determinations or orders of Tribunal	171
Section 119	Form and proof of determinations or orders of Tribunal	171
Section 120	Application for stay of execution of determinations or orders of Tribunal	172
Section 121	No other right of appeal	172
Section 122	Rules by Chief Justice	173
Section 123	Party may appeal to Court of Appeal with leave	174
Section 124	Powers of Court of Appeal	175
Section 125	No stay of execution on appeal	176

Division 2 – Resolution Compensation Tribunal

Section 126	Interpretation	177
Section 127	Establishment of Resolution Compensation Tribunal	177
Section 128	Establishment of additional tribunals	179
Section 129	Jurisdiction of Tribunal	180
Section 130	Powers of Tribunal	181
Section 131	Sittings of Tribunal to be held in public	184
Section 132	Use of incriminating evidence required by Tribunal	185
Section 133	Contempt dealt with by Tribunal	186

Section 134	Costs	187
Section 135	Notification of determinations or orders of Tribunal	188
Section 136	Form and proof of determinations or orders of Tribunal	189
Section 137	Registration of determinations or orders made by Tribunal	190
Section 138	Application for stay of execution of determinations or orders of Tribunal	191
Section 139	No other right of appeal	191
Section 140	Rules by Chief Justice	192
Section 141	Party may appeal to Court of Appeal with leave	193
Section 142	Powers of Court of Appeal	194
Section 143	No stay of execution on appeal	195

PART 8 CLAWBACK OF REMUNERATION

Section 144	Interpretation	197
Section 145	Application to Court	198
Section 146	Clawback order	200
Section 147	Repaid or returned remuneration	201
Section 148	Prohibition of avoidance	202

PART 9 DEFERRAL OF CERTAIN DISCLOSURE REQUIREMENTS

Section 149	Interpretation	203
Section 150	Deferral of requirement to disclose inside information	205
Section 151	Deferral of requirement to disclose interests and short positions	207
Section 152	Suspension of dealings in securities	210
Section 153	Suspension of certain obligations	211

PART 10 INFORMATION GATHERING, INSPECTION AND INVESTIGATION POWERS**Division 1 – Preliminary**

Section 154	Interpretation	214
Section 155	When powers are exercisable	215

Section 156	Authorization of persons	215
Section 157	Appointment of investigator	216
Division 2 – Information Gathering		
Section 158	Power to demand information, records or documents	216
Section 159	Offences in relation to section 158	218
Division 3 – Inspection		
Section 160	Powers of inspection	220
Section 161	Offences in relation to section 160	221
Division 4 – Investigation		
Section 162	Powers of investigation	223
Section 163	Powers of investigator to require production of records or documents or attendance for examination	224
Section 164	Offences for non-compliance with requirements imposed under section	226
Section 165	Use of incriminating evidence in proceedings	227
Division 5 – Miscellaneous		
Section 166	Magistrates' warrants	228
Section 167	Lien claimed on records or documents	232
Section 168	Production of information in information systems etc.	232
Section 169	Inspection of records and documents seized etc.	233
Section 170	Destruction of documents etc.	233
Section 171	Recovery of expenses	234

PART 11 CONFIDENTIALITY REQUIREMENTS

Section 172	Interpretation	235
Section 173	Official secrecy	236
Section 174	Confidentiality on the part of financial institutions etc.	240
Section 175	Disclosure of information to authorities in other places	243

PART 12 RESOLUTION FUNDING ARRANGEMENTS

Section 176	Interpretation	246
Section 177	Recovery of costs following application of stabilization option	247

Section 178	Payment from resolution funding account	248
Section 179	Repayment of resolution funds	251
Section 180	Resolution levy	251
Section 181	Regulations	253
Section 182	Rate of levy	254
Section 183	Recovery of levy	255
Section 184	Distribution of surplus	255
Section 185	Audit regulations	255

PART 13 NON-HONG KONG RESOLUTION ACTIONS

Section 186	Interpretation	258
Section 187	Recognition of non-Hong Kong resolution actions	259
Section 188	Effect of recognition of non-Hong Kong resolution actions	261
Section 189	Compensation arrangements	262
Section 190	Incidental provision etc.	263
Section 191	Support measures	263

PART 14 MISCELLANEOUS

Section 192	<i>Notice of intention to present winding up petition to resolution authority</i>	266
Section 193	Restriction on commencement of winding up proceedings	267
Section 194	Disapplication of certain provisions	268
Section 195	Obstruction	268
Section 196	Code of practice	269
Section 197	Reasonable excuse	270
Section 198	Prosecution of offences by resolution authority	271
Section 199	Immunity from civil liability	272
Section 200	Legal professional privilege	273
Section 201	Certain instruments are not subsidiary legislation	274
Section 202	Power of resolution authorities to specify forms	274
Section 203	Amendment of Schedules	275

PART 15 RELATED AND CONSEQUENTIAL AMENDMENTS

Division 1 – Enactments Amended

Section 204	Enactments amended	280
-------------	--------------------	-----

Division 2 – Amendments to Specification of Public Offices Notice (Cap. 1 sub. leg. C)

Section 205	Schedule amended (specification of public offices)	280
-------------	--	-----

Division 3 – Amendments to Insurance Companies Ordinance (Cap. 41)

Section 206	Section 2 amended (interpretation)	281
Section 207	Section 53A amended (secrecy)	282
Section 208	Section 53B amended (disclosure of information)	283

Division 4 – Amendments to Banking Ordinance (Cap. 155)

Section 209	Section 2 amended (interpretation)	284
Section 210	Section 120 amended (official secrecy)	284
Section 211	Section 121 amended (disclosure of information relating to authorized institutions)	285

Division 5 – Amendments to Banking (Capital) Rules (Cap. 155 sub. leg. L)

Section 212	Schedule 4B amended (qualifying criteria to be met to be Additional Tier 1 capital)	286
Section 213	Schedule 4C amended (qualifying criteria to be met to be Tier 2 capital)	286

Division 6 – Amendment to Electronic Transactions Ordinance (Cap. 553)

Section 214	Schedule 2 amended (proceedings in relation to which sections 5, 5A, 6, 7 and 8 of this Ordinance do not apply under section 13(1) of this Ordinance)	288
-------------	---	-----

Division 7 – Amendments to Securities and Futures Ordinance (Cap. 571)

Section 215	Section 10 amended (delegation and sub-delegation of Commission's functions)	288
Section 216	Section 307B amended (requirement for listed corporations to disclose inside information)	289
Section 217	Section 310 amended (duty of disclosure: cases in which it may arise)	290

Section 218	Section 341 amended (duty of disclosure by director and chief executive)	290
Section 219	Section 378 amended (preservation of secrecy, etc.)	290
Section 220	Section 381B amended (disclosure by Monetary Authority)	292
Section 221	Schedule 1, Part 1 amended (interpretation)	293
Section 222	Schedule 2 amended (Securities and Futures Commission)	294

Division 8 – Amendments to Deposit Protection Scheme Ordinance (Cap. 581)

Section 223	Section 2 amended (interpretation)	294
Section 224	Section 46 amended (confidentiality)	295

Division 9 – Amendments to Payment Systems and Stored Value Facilities Ordinance (Cap. 584)

Section 225	Section 2 amended (interpretation)	295
Section 226	Section 50 amended (confidentiality)	296
Section 227	Section 55A added	297

Division 10 – Amendments to Insurance Companies (Amendment) Ordinance 2015 (12 of 2015)

Section 228	Section 5 amended (section 2 amended (interpretation))	298
Section 229	Section 90 amended (Schedules 1A to 1D added)	298
Section 230	Section 99 amended (Schedule amended)	299
Section 231	Part 3, Division 34 added	300
Section 232	Schedule 1 amended (minor amendments to Insurance Ordinance relating to replacement of "Insurance Authority" by "Authority")	303

Division 11 – Amendments to Financial Institutions (Resolution) Ordinance (23 of 2016)

Section 233	Section 2 amended (interpretation)	304
Section 234	Section 27 amended (requirements for consultation and for liaising with regulatory bodies)	305
Section 235	Section 78 amended (deferral of requirements under section 8 of Insurance Companies Ordinance)	306
Section 236	Section 173 amended (official secrecy)	307
Section 237	Part 15, Division 3 heading amended (amendments to Insurance Companies Ordinance (Cap. 41))	307
Section 238	Section 206A added	308

Section 239	Section 207 amended (section 53A amended (secrecy))	309
Section 240	Section 208 amended (section 53B amended (disclosure of information))	309
Section 241	Section 208A added	310
Section 242	Schedule 8 amended (Resolvability Review Tribunal)	311
Section 243	Schedule 9 amended (Resolution Compensation Tribunal)	312
Section 244	“保險業監管局” substituted for “保險業監督”	313

SCHEDULES

Schedule 1	Protective Schemes	315
Schedule 2	Appointment Criteria for Independent Valuer	317
Schedule 3	Securities Transfer Instruments	319
Schedule 4	Property Transfer Instruments	325
Schedule 5	Excluded Liabilities	337
Schedule 6	Bail-in Instruments	341
Schedule 7	Valuation Assumptions and Principles	345
Schedule 8	Resolvability Review Tribunal	347
Schedule 9	Resolution Compensation Tribunal	357

APPENDICES

<i>Introductions</i>		367
<i>Appendix 1: Financial Institutions (Resolution) (Protected Arrangements) Regulation</i>		371
<i>Appendix 2: Hong Kong Monetary Authority: Resolution Planning – Core Information Requirements</i>		389
<i>Appendix 3: I-Annex 3: Resolvability Assessments</i>		419
<i>Appendix 4: I-Annex 4: Essential Elements of Recovery and Resolution Plans</i>		425
<i>Appendix 5: Principles on Loss-absorbing and Recapitalisation Capacity of G-SIBs in Resolution – Total Loss-absorbing Capacity (TLAC) Term Sheet</i>		433
<i>Index</i>		467

ProView Exclusive Materials

- 1. Key Attributes of Effective Resolution Regimes for Financial Institutions*
- 2. Regulations on Protected Arrangements: Consultation Paper*

Table of Cases

A	
A v The Securities and Futures Commission	
[2008] 1 HKLRD 591.....	166.003
A v The Securities and Futures Commission	
(unrep., HCAL 24/2010, 18 August 2010)	121.002, 139.002
B	
Berich Brokerage Ltd v Securities and Futures Commission	
[2005] 2 HKLRD 583.....	112.004, 129.002
C	
Chu Kwok Shing Godwin v	
SFC, SFAT No. 1 of 2009 (30 June 2010).....	113.004, 130.004
H	
Hong Kong Forex Investment Ltd v The Securities and Futures Commission	
(unrep., CACV 26/2008, 29 January 2008)	113.005, 130.005
K	
Kwong Mile Services Ltd v CIR	
[2004] 3 HKLRD 168.....	123.002, 141.002
L	
Li Kwok Keung Asser v	
SFC, SFAT No. 2 of 2009 (19 March 2010)	113.004, 130.004
S	
Securities and Features Commission v Earnst & Young	
[2015] HKLRD 293	163.003
W	
Wallbanck Brothers Securities (Hong Kong) Ltd v Emily Tse	
[2015] HKCU 714	199.003