

## Module Outline

<b>Module Title:</b>	Banking Law and Practice
<b>QF Level:</b>	Reference is being taken and pitched to HKQF Level 6
<b>QF Credit:</b>	30 credits for Postgraduate Diploma for Certified Banker (15 contact hours and 3 examination hours)
<b>Teaching/Training &amp; Learning Activities:</b>	Training Class
<b>Pre-requisite:</b>	N/A

### Module Objective:

This module contributes to the achievement of acquiring an advanced level of knowledge and skills embedded in the Programme Intended Learning Outcomes by helping the learners develop a multi-perspective evaluation over bankers' rights and duties not only in banker-customer relationship, but also in internal areas of banking operations that support bankers' external functions. By discussing account conducts and the respective strategies of management, the learners are expected to enhance their cognitive skills of evaluation over the internal and external problems. Such competence and attribute would be strengthened by a thorough application of legal knowledge to different levels of banking operations.

### Module Intended Learning Outcome (MILO) & Unit of Competencies (UoCs)

Upon completion of the module, learners should be able to:

MILO1:	Critically assess the implications of the current law and practice governing banker's roles in banker-customer contractual and non-contractual relationships;	
MILO2:	Analyze critically the bank's duty in different types of accounts and account conduct in banking operations under the framework of banker-customer relationship;	
MILO3	Evaluate critically the law related to security which commonly accepted by the banks; and	
MILO4:	Communicate and assess the consequences of undertaking bankruptcy proceedings to the bank and customer in relation to bank's bad debt collection procedures.	

### Assessment Activity

Type of Assessment Activity	MILOs	Weighting (%)
Examination	MILO 1-4	100

## Examination Format and Duration

Time allowed: 3 hours

The examination consists of two parts:

- Part 1 – Case Study question
- Part 2 - 3 out of 5 essay questions

Passing mark for this subject is 50%

## Syllabus

<b>Chapter 1: Banker-Customer Relationship and Account Opening</b>	
<b>1</b>	<b>Contractual Relationship under Code of Banking Practice</b>
1.1	- Special relationship involved in <ul style="list-style-type: none"> <li>▪ Mandates</li> <li>▪ Powers of Attorney (including Enduring Power of Attorney)</li> <li>▪ Limitation of actions</li> <li>▪ Appropriation of payments</li> <li>▪ Set-off</li> <li>▪ Bankers' lien</li> </ul>
1.2	- Banker's Duty of Secrecy (including bankers' opinions/trade enquiries)
1.3	- Code of Banking Practice
1.4	- Code of Practice on Consumer Credit Data and Personal Data Privacy Ordinance
1.5	- Statement of account or passbook
1.6	- Wrongful dishonour of cheques
1.7	- Exemption Clauses
<b>2</b>	<b>The Opening and the Conduct of Accounts</b>
2.1	- The opening and the conduct of accounts in credit and debit for various customers: <ul style="list-style-type: none"> <li>▪ Personal customers</li> <li>▪ Joint customers</li> <li>▪ Minors</li> <li>▪ Executors, administrators and trustees</li> <li>▪ Proprietors and partnerships</li> <li>▪ Unincorporated clubs, societies and solicitors</li> <li>▪ Incorporated companies (including overseas companies, nominee holding companies)</li> </ul>
2.2	- Anti-money laundering and terrorist financing
<b>Chapter 2: Banking Operations</b>	
<b>1</b>	<b>Bills of Exchange and Other Banking Operations</b>
1.1	- Types of negotiable and quasi negotiable instruments
1.2	- Bills of Exchange <ul style="list-style-type: none"> <li>▪ Definition of a bill of exchange</li> <li>▪ Parties, elements in a bill of exchange</li> <li>▪ Dating, acceptance, negotiation of a bill</li> </ul>

1.3	<ul style="list-style-type: none"> <li>▪ Indorsement, holder for value, holder in due course, forged or unauthorized Signature</li> <li>▪ Delivery, duties of holder, discharge of a bill</li> <li>▪ Bills of Exchange relating to collecting bankers and paying bankers</li> </ul>
1.4	<ul style="list-style-type: none"> <li>- Promissory Notes               <ul style="list-style-type: none"> <li>▪ Definition of a promissory note</li> <li>▪ Differences between promissory notes and bills of exchange</li> <li>▪ Liabilities of parties</li> </ul> </li> <li>- Other Banking Operations               <ul style="list-style-type: none"> <li>▪ Credit cards</li> <li>▪ Direct debits (e.g. ATM, EPS, Standing orders)</li> <li>▪ Investment advice</li> <li>▪ Safe custody</li> <li>▪ Ancillary financial services (e.g. Hire purchase, Factoring, Leasing)</li> <li>▪ Internet and phone banking</li> </ul> </li> </ul>
<b>Chapter 3: Law related to Security</b>	
<b>1</b>	<b>Guarantee</b>
1.1	- Guarantees and indemnities distinguished
1.2	- Types of guarantee and formal requirements
1.3	- Liability of guarantor, guarantor's rights against the creditor and guarantor's rights against the debtor
1.4	- Rights of co-guarantors among themselves and discharge of the guarantor
<b>2</b>	<b>The Opening and the Conduct of Accounts</b>
2.1	- Definition and creation of mortgage
2.2	- Legal and equitable mortgage
2.3	- Mortgagee's powers and remedies
2.4	- Mortgagor's rights
<b>3</b>	<b>Other Security Interest</b>
3.1	- Company Charges: Definition and creation of charge, fixed and floating charges, chargee's powers and remedies, chargor's rights
3.2	- Pledge: Definition and creation of pledge, pledgee's powers and remedies, ledgor's rights
3.3	- Hypothecation: Hypothecation and pledge
3.4	- Company Shares: Mortgages of company shares, powers and remedies of mortgagees
3.5	- Insurance Policies: Creation of security interest in different types of insurance policies
<b>Chapter 4: Insolvency</b>	
<b>1</b>	<b>Bankruptcy</b>
1.1	- Main functions of bankruptcy proceedings. Who may be made bankrupt? Who may present a bankruptcy petition?
1.2	- Grounds for commencement of a bankruptcy proceeding
1.3	- The statutory demand
1.4	- New concepts in bankruptcy: transactions at an undervalue, unfair preferences,

<p>1.5 1.6 1.7 1.8</p>	<p>extortionate credit transactions. Bankruptcy proceedings - Consequences of bankruptcy. Proof of debts. Setting off before proof. Property available for payment of debts - Trustees in bankruptcy - Discharge from bankruptcy - Voluntary arrangements</p>
<p><b>2</b> 2.1 2.2 2.3 2.4 2.5 2.6 2.7</p>	<p><b>Winding-up</b> - Modes of winding up. Winding up by the court: jurisdiction, cases in which a company may be wound up by court, petition for winding up and effects thereof; commencement of winding up, consequences of a winding-up order, official receiver in winding up, liquidators, committee of inspection, general powers of court in case of winding up by court - Winding up by court by way of summary procedure - Winding up with a regulating order - Winding up of unregistered companies - Assets of the company available for distribution: contributories, collection of the company's assets, onerous property - Voluntary winding up: resolutions for and commencement of voluntary winding up, consequences of voluntary winding up, declaration of solvency, members' voluntary winding up, creditors' voluntary winding up, powers and duties of the liquidator in a voluntary winding up, special procedure for voluntary winding up - Proof and ranking of claims, effects of winding upon antecedent and other transactions, dissolution of a company, offences before and in the course of winding up</p>

**Essential Readings:**

- HKIB. Banking Law and Practice (1st ed.). John Wiley & Sons

**Supplementary Readings:**

- Claire Wilson. (2016). Banking Law and Practice in Hong Kong (1st ed.). Sweet & Maxwell.
- Derek Roebuck, DK Srivastava, HM Zafrullah and Sara Tsui. (2009). Banking Law in Hong Kong: Cases and Materials (2nd ed.). Lexis Nexis.
- Mark Hsiao. (2013). Principles of Hong Kong Banking Law (1st ed.). Sweet & Maxwell. I.

**Further Readings:**

- Chan Bo-ching Simon. (2000 & 2001). Hong Kong Banking Law and Practice. (Vol. 1 & 2). HKIB.
- Douglas Arner, Berry Hsu, Say H. Goo, Syren Johnstone, Paul Lejot and Maurice Kwok-Sang Tse. (2016). Financial Markets in Hong Kong: Law and Practice (2nd ed.). Oxford University Press.
- Hans Mahncke, Michael Ramsden, Luke Marsh and Sidney Yankson. (2014). The Hong Kong AntiMoney Laundering Ordinances Commentary and Annotations (Collected Volume) (1st ed.). Sweet & Maxwell.
- Stephen SK Chan. (2012). Butterworths Hong Kong Banking Law Handbook (3rd ed.). Lexis Nexis.

**For more details, please refer to further reading session at end of each chapter.**