

## CHAPTER VII

### THE RESERVE FUND AND THE HKCC CONTINGENT ADVANCE CAPITAL

#### General

701. (a) The Clearing House shall establish a fund to provide resources to assist the Clearing House in meeting its obligations under Contracts arising pursuant to Rule 309 or Rule 313. That fund shall constitute the Reserve Fund which shall be used only if the Clearing House is unable to meet its liabilities under Contracts by reason of defaults by HKCC Participants and shall be used only in accordance with the following Rules.
- (aa) In addition to establishing the Reserve Fund, the Clearing House may put in place an arrangement in the form of HKCC Contingent Advance Capital to provide additional funding in the event that its liabilities from Contracts arising pursuant to Rule 309 or Rule 313 exceed the resources available under the Reserve Fund. The level of HKCC Contingent Advance Capital support shall be determined in accordance with the Clearing House Procedures, but shall not in any event exceed the actual amount of funding made available by HKEX to the Clearing House for this purpose under the prevailing circumstances. The resources of the HKCC Contingent Advance Capital shall be applied only after the resources of the Reserve Fund have been fully depleted and to the extent any amount under the HKCC Contingent Advance Capital is so applied, HKCC Participants shall be liable to repay and reimburse such amount to the Clearing House forthwith on demand.
- (b) Notwithstanding that any resources of the Reserve Fund and the HKCC Contingent Advance Capital may be applied to cover a default, this shall in no way prejudice the Clearing House's right to recover in full from the Defaulter. Monies recovered from the Defaulter (less any costs and expenses of recovery) may, but need not necessarily, be applied in replenishment of the Reserve Fund. If applied, the replenishment would be in the reverse order of priority and on the same pro rata basis as that for payment out of the Reserve Fund pursuant to Rules 706(c) to 706(e). It may be a term of any guarantee, facility or insurance policy that recoveries from the Defaulter be applied in a particular fashion other than in replenishment of the Reserve Fund.

#### Accounts and accounting

702. (a) The Clearing House shall earmark the Reserve Fund in its accounts and maintain a separate record in respect of the Reserve Fund so that all amounts standing to the credit of and all guarantees, facilities or policies

inuring for the benefit of the Reserve Fund from time to time shall be apparent from the accounts and so that it is apparent whether any of such amounts, guarantees, facilities or policies are of limited application, being available to support the Clearing House's obligations only under particular Contracts or classes of Contract. Without prejudice to the aforesaid, the Clearing House shall maintain a separate account in respect of all the HKCC Participant's Deposits and HKCC Participant Additional Deposits made or required to be made by HKCC Participants to the Reserve Fund.

- (b) Simultaneously with the annual audit of the accounts of the Clearing House, the Clearing House shall request its auditors to prepare a report on the Reserve Fund for circulation to the Commission and, upon request, to HKCC Participants.

#### Notify resources of Reserve Fund

- 703. The Clearing House shall notify HKCC Participants and the Commission on a regular basis of the resources available to the Reserve Fund, comprising the amounts standing to the credit of the Reserve Fund, the policies, guarantees and facilities available to support the Reserve Fund and the level of HKCC Contingent Advance Capital support, and shall notify HKCC Participants and the Commission as to whether any part or parts of such resources is or are limited in application, being available to support the Clearing House's obligations only under particular Contracts or classes of Contracts.

#### Appropriations to Reserve Fund

- 704. (a) The Clearing House may appropriate any of its resources to the Reserve Fund.
- (b) All HKCC Participant's Deposits and HKCC Participant Additional Deposits shall be credited to the Reserve Fund promptly upon receipt.

#### Support for Reserve Fund

- 705. The Clearing House may arrange insurance policies, guarantees or any other facilities or source of revenue for the purpose of providing additional resources to the Reserve Fund. Any such policy or guarantee or other facility may be expressed to be available to support the Clearing House's obligations under all Contracts, or only under particular Contracts or classes of Contract.
- 705A. For the purpose of providing further additional resources to the Reserve Fund, the Clearing House shall from time to time require HKCC Participants to pay such amounts by way of HKCC Participant Additional Deposits as the Clearing House determines necessary in accordance with the Clearing House Procedures. HKCC Participant Additional Deposits shall be applied by the Clearing House to the Reserve Fund in accordance with the HKCC Rules.

### Use and order of application of Reserve Fund

706. (a) Except as provided in Rule 708, amounts standing to the credit of the Reserve Fund may be applied only in respect of the Clearing House's liabilities which arise by virtue of its being a counterparty to every Contract registered with and cleared by it (including but not limited to the expenses involved in making recoveries against Defaulters). If, in the opinion of the Clearing House, the resources of the Reserve Fund are at any time liable to be fully depleted or are at any time at a level which is unlikely to satisfy all such liabilities, the resources of the Reserve Fund shall be applied to all such liabilities on a pro rata basis or in such other manner as the Clearing House may consider fair and appropriate.
- (b) The Clearing House may agree or arrange with any person (including but not limited to HKCC Participants) that any of the amounts standing to the credit of the Reserve Fund shall be available to support the Clearing House's obligations only under particular Contracts or classes of Contract or that any such amounts shall be applied in a particular order of priority.
- (c) Subject to any agreement or arrangement pursuant to Rule 706(b), the amounts standing to the credit of the Reserve Fund shall be applied towards any payment permitted by Rule 706(a) in the following order of priority: -
- (i) First, the HKCC Participant's Deposit and HKCC Participant Additional Deposit of the Defaulter;
  - (ii) Second, interest income credited to the Reserve Fund;
  - (ii) Third, the proceeds of any insurance policy arranged pursuant to Rule 705;
  - (iv) Fourth, the Clearing House's resources appropriated from time to time to the Reserve Fund;
  - (v) Fifth, the HKCC Participant's Deposits of other HKCC Participants;
  - (vi) Sixth, the proceeds of any guarantee or facility arranged pursuant to Rule 705; and
  - (vii) Seventh, the HKCC Participant Additional Deposits of other HKCC Participants
- (d) (deleted)

- (da) For the purposes of sub-paragraphs (v) and (vii) of Rule 706(c), if after the date of default of a Defaulter, an HKCC Participant has itself been declared as a Defaulter, any prevailing amounts standing to the credit of its HKCC Participant's Deposit and HKCC Participant Additional Deposit shall be applied towards the default of the other Defaulter and its own default in such manner as the Clearing House may consider appropriate.
- (e) The amount of HKCC Participant's Deposit and HKCC Participant Additional Deposit in respect of each HKCC Participant to be applied pursuant to sub-paragraphs (v) and (vii) of Rule 706(c) respectively shall be calculated on a pro rata basis by reference to the HKCC Participant's share of the total HKCC Participant's Deposits or total requirements for HKCC Participant Additional Deposits, as the case may be, immediately before the default, excluding the portions contributed by any Defaulter and any HKCC Participant whose HKCC Participantship has been effectively terminated or revoked. Notwithstanding the aforesaid, if on or before the date of the default of a Defaulter, the HKCC Participantship of an HKCC Participant is effectively terminated or revoked, its HKCC Participant's Deposit and HKCC Participant Additional Deposit will not be applied towards the default, and if on or before the date of the default, an HKCC Participant has itself been declared as a Defaulter, its HKCC Participant's Deposit and HKCC Participant Additional Deposit will only be applied towards its own default.

#### Use of HKCC Contingent Advance Capital

- 706A. In the event that the Reserve Fund is insufficient to cover the Clearing House's liabilities under Contracts arising pursuant to Rule 309 or Rule 313 even after its resources have been fully depleted as a result of an application made under Rule 706, the Clearing House may apply any funding available under the HKCC Contingent Advance Capital towards the satisfaction of its outstanding liabilities, up to an amount not exceeding the HKCC Participant Additional Deposits applied pursuant to Rule 706.
- 706B. If, in the opinion of the Clearing House, the amount available under the HKCC Contingent Advance Capital is at any time liable to be fully utilized or is unlikely to be sufficient to meet all of its outstanding liabilities, such available amount shall be applied to cover its liabilities on a pro rata basis or in such other manner as the Clearing House shall consider fair and appropriate.
- 706C. To the extent any amount has been paid by the Clearing House out of the HKCC Contingent Advance Capital pursuant to Rule 706A, HKCC Participants (excluding those specified under Rule 706D) shall be liable to repay and reimburse such amount in full to the Clearing House on demand. The repayment or reimbursement amount required from each HKCC Participant shall be determined by the Clearing House on a pro rata basis and must be met

by cash payment within the time period specified by the Clearing House. For the avoidance of doubt, such payments shall not form part of the Reserve Fund and if at any time both a demand under this Rule and a demand for Replenishment Contribution under Rule 707A or HKCC Participant Additional Deposit under Rule 705A remain to be met by an HKCC Participant, the demand made under this Rule shall have priority regardless of whether it is made at the same time as or after the demand under Rule 707A or Rule 705A and any cash payment from the HKCC Participant shall first be applied towards the satisfaction of the demand under this Rule.

- 706D. Repayment and reimbursement of the HKCC Contingent Advance Capital shall not be required from any HKCC Participant which has been declared as a Defaulter or whose HKCC Participantship has been effectively terminated or revoked on the day such demand for repayment or reimbursement is made, or which became an HKCC Participant only after the date the default giving rise to such demand for repayment and reimbursement occurs.

#### Replenishment of Reserve Fund

707. (a) (deleted)  
(b) (deleted)

707A. (a) Where all or part of the HKCC Participant's Deposit and HKCC Participant Additional Deposit of an HKCC Participant are applied pursuant to Rule 706, the HKCC Participant (excluding any HKCC Participant specified under Rule 707A(b)) shall on demand by the Clearing House make a Replenishment Contribution to the Reserve Fund (i) to ensure that its Reserve Fund Deposits are replenished to the same level as that before any application is made; and (ii) to provide such additional resources as the Clearing House may require to meet any liabilities that remain outstanding even after any funding under the HKCC Contingent Advance Capital has been utilized pursuant to Rule 706A.

(b) Replenishment Contributions shall not be required from HKCC Participants which have been declared as a Defaulter or whose HKCC Participantships have been effectively terminated or revoked on the day such Replenishment Contributions are demanded.

(c) The Clearing House shall notify HKCC Participants of any demand for Replenishment Contributions verbally or in writing as the Clearing House considers appropriate. The Clearing House may demand such Replenishment Contributions to be satisfied after or at the same time that an application is made under Rule 706. All demands for Replenishment Contributions must be met by cash payment in Hong Kong dollars or in any other currency prescribed by the Clearing House from time to time no later than the third Business Day after the demand is made by the

Clearing House or within such other time period as may be specified by the Clearing House and shall be without prejudice to the Clearing House's right to any HKCC Contingent Advance Capital repayment under Rule 706C.

Payments out of Reserve Fund

708. (a) In addition to its power to make payments out of the Reserve Fund in respect of the liabilities referred to in Rule 706(a), the Clearing House may make payments out of the Reserve Fund in accordance with the following provisions of this Rule.
- (aa) The Clearing House may apply any amounts standing to the credit of the Reserve Fund as a short-term source of liquid funds to meet any immediate obligations under Contracts arising pursuant to Rule 309 or Rule 313 on a temporary basis.
  - (b) The Clearing House may apply any amounts standing to the credit of the Reserve Fund (other than any amount representing HKCC Participant's Deposits and any HKCC Participant Additional Deposits) which are in the opinion of the Clearing House surplus to the requirements of the Reserve Fund in such manner as the Clearing House thinks fit, including appropriation of such moneys out of the Reserve Fund temporarily or permanently.
  - (c) For the purposes of Rules 217 and 519(d) the Clearing House may withdraw from the Reserve Fund and reimburse to an HKCC Participant an amount equal to an HKCC Participant's Deposit and any HKCC Participant Additional Deposit (or such lesser amount as is payable in accordance with the provisions of those Rules).